Volume XXIII] *September, 1908* [*Number 3*

POLITICAL SCIENCE QUARTERLY

THE CHIEF QUESTIONS OF PRESENT AMERICAN POLITICS.

WE are now on the eve of a great conflict, if not a revolution; and it behooves us to pause a moment and survey carefully the situation. It is one of the chief misfortunes of our American politics that we almost never deal with things under a direct issue. Our politicians understand to perfection the trick of sidetracking. It appears to me that the moment has now arrived when such manipulation will no longer answer—the moment when the people, under the lead of independent thinkers, must take things in hand and refuse to be longer misled or deluded. What we believe and what we would realize must be clearly thought out and presented. This is the necessary first step to success.

What then lies directly before us in the political and economic world to which we can give the precise form of questions? First let us consider our foreign relations and the general international situation. The world is now in ferment, chiefly because three great modern states, Germany, the United States and Japan, have attained internal unity and have appeared upon the stage of world politics, and because between the first two and the last named there obtains an apparent difference of opinion in regard to the fate of China and middle Asia. I do not consider the question of the immigration of the Japanese into the United States or Canada or South America as the real Asiatic question. It is possible that the immigration question may be so clumsily handled as to become the issue under which the real Asiatic question shall be solved; but we must distinguish

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

clearly in thought between the two questions and do our utmost to prevent their being practically confounded. The real Asiatic question is this, namely, whether China and middle Asia shall attain their *éclaircissement*, their modern civilization, under the rule of Japan or of England or of Russia, or of all three by partition, or whether they shall work out this problem for themselves under the influence of active trade and intercourse with all the civilized nations of the earth. The interests of the United States and of Germany require most decidedly the latter alternative. To the political and economic interests of the United States it is absolutely indispensable that the independence of China shall be preserved and that the gates of entrance to China and middle Asia shall be opened and kept wide open to the commerce and intercourse of the whole civilized world. From a purely materialistic point of view, the export of the products of the industry of the United States to China and middle Asia would, under the policy of the open door, in a short time defray the cost of construction of the greatest navy of the world a dozen times over. Between six and seven hundred millions of people capable of civilization, inhabiting a territory of six to seven millions of square miles, are to be brought into touch with modern culture. The vast financial profit for those nations which shall mediate this contact, which shall furnish the material for the building of the ships, the railroads, the telegraph and telephone lines, the agricultural and industrial machinery and the industrial products of the Occident generally, is almost incalculable. That the United States shall have a fair share of this trade and commerce is quite indispensable to our economic future.

But there is a higher point of view from which to regard the subject, the point of view of our world duty. If we survey the history and present situation of the world we are bound to reach the conclusion that the Asiatic states must acquire modern political civilization either through the supremacy over them of some state with modern civilization or through active intercourse and commerce with the modern civilized nations of the world. Substantially the whole of Africa has been subjected to the rule of the European states; the same is true of half or more

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

than half of Asia; and the great all-comprehending question of to-day for China and middle Asia is whether it shall be the *rule* or the *influence* of foreign states under which they shall attain their modern awakening. It must be the one or the other. There is no third way. There is no question that American opinion will stand for the latter alternative. It is our way to allow to every people the fullest opportunity to redeem itself under the influence of world commerce and world intercourse, and only after this has been fully tried and has proved impossible do we agree to the establishment of a foreign rule over any people. That China has the capacity to work out its modern civilization under the influence of world commerce and intercourse is so probable that it must be presumed to be true. From the American point of view, the policy of the world in respect to China should be to maintain the independence of China for China's own sake, on the condition, of course, that China shall keep her doors wide open impartially to the commerce and intercourse of all civilized nations. I go a step further and claim that it is our own particular and especial duty to insist upon the maintenance of such a world policy. Our geographical position makes us the chief bearers of the world's civilization in the Pacific, and the world significance of our possession of the Philippine Islands is that it gives us a proper and an advantageous base of operations for the discharge of this great duty. Sound material interests and world duty thus compel us to dedicate our best powers to the solution of this great question.

But can we succeed in accomplishing this great work alone? Do we not need for this a powerful and trustworthy friend on the Atlantic, to maintain our security on this side?

This last question forces us to consider the present situation of the world and the present condition of world politics. We may affirm without fear of successful contradiction that modern political civilization has radiated from Europe into the other parts of the world. Asia is the original source and home of the religions of the world; Europe, on the other hand, of the great states of the world. The states of Asia have therefore naturally been theocracies and theocratic despotisms. This is

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

indeed a necessary first form in the development of the state; but it is a form of a low order, and unless it be overcome by a successful advance to a higher form it leads inevitably to decline and decay. With the exception of Japan, this has been the fate of the Asiatic states. Africa, the Americas and Australia, on the other hand, have been rescued and redeemed by European colonization and rule. This great work of political civilization, both as to original development and spread throughout the world, has been accomplished by the Romanic and Teutonic peoples of Europe. In the sixteenth and seventeenth centuries the Spaniards and the Portuguese, the French and Italians played the chief rôle, but in the nineteenth they have been compelled to yield the scepter of the world to the Teutons.

In strictest fact the Teutons have, for the last fifteen hundred years, been the great state-builders of the world. They have created England, Germany, Sweden, Norway, Denmark, the Netherlands, Austria, Switzerland and the United States. They founded in Spain the Visigothic and Suevic states and drove the Arabs out of Europe. They created in Gaul the Frankish state, which preserved all western Europe from dissolution. They organized in Italy the Lombard state, which lives to-day in the rule of the house of Savoy and has at last established the political unity of Italy. They protected middle Europe against the flood of the Slavonic invasion, which in the middle ages threatened to inundate it, and they have set firm the Hohenzollern outposts of East Prussia and Rumania to hold such movements in the future in permanent check. They number now one hundred and fifty millions of the four hundred millions of Europe's inhabitants; they increase by one and a half millions of souls annually through the excess of births over deaths; and one-third of the entire population of the world is now subject to their political sovereignty. Alongside of them, or rather over against them, stand the Slavonians, who number also about one hundred and fifty millions of souls but are still politically barbaric or at least undeveloped, and the Romanic races, who number about one hundred millions of souls but multiply, as a whole, in an ever decreasing ratio and show themselves with ever increasing clearness to be races of the past.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

There can thus be no doubt that we Americans must seek our political friendships chiefly among the Teutonic powers, and that among these Germany and England stand at the head. A complete and sincere understanding between Germany, England and the United States in regard to the Asiatic question and the world policy in general is the most desirable situation which can be imagined. How do the relations between the United States and England, on the one side, and the United States and Germany, on the other, at present stand? Apparently friendly relations exist in both instances, but when we go beneath the surface of things and contemplate the movements and purposes which are there in play, we find at least uncertainties, which must be weighed and taken into the calculation.

In our relation to England four facts come into view which are disquieting. First, we observe that England is still twice over at least the greatest sea power of the world and, from the point of view of international law, still the most illiberal. It is difficult for England to forget that she once held the sovereignty of the seas, and it is more difficult for her to forgive Germany for having become, in the last quarter of a century, so strong a competitor thereon as to have virtually broken the English maritime monopoly. Once at least in our own history we have been compelled to feel, in the most painful manner, with what utter lack of consideration England can make use of an apparent opportunity to suppress commercial rivalry on the seas. Our own maritime interests have scarcely yet recovered from the heavy blows which they suffered between 1861 and 1865 through English connivance. In the second place, we observe that England is the greatest colonial power in Asia. Her rule in Asia extends over a territory which measures more than two millions of square miles and is inhabited by more than three hundred and fifty millions of people. The policy of England appears also inclined to a further extension of her rule over middle Asia. In the third place, we observe that England is in alliance with Japan. Exactly what the Japanese policy in middle Asia is, and how far England has obligated herself to go, or would go, in support of this policy, we do not know. Neither do we fully know what the approach between England

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

and Russia signifies. Taken together, these things may possibly point to the partition of all Asia between these three great powers; and when we cast the horoscope of the future we must take into account such possibilities as have already appeared above the horizon. In the fourth place, we now know that another rapidly and powerfully developing nation divides the North American continent with us and has already become so strong and self-conscious that it can no longer be ignored. It is happily true that it is also substantially a Teutonic nation, and that ethnical and moral harmonies exist between it and us which make for peace and friendship. For a long time we thought that these harmonies and the geographical situation of our northern neighbor would lead finally to her incorporation in our Union; but during the last twenty-five years this prospect has gradually faded away, as the consciousness on the part of the inhabitants of this widely extended region of their natural independence has become distinct and as their national consolidation has become strong. They are now already a very respectable and considerable state body; they have developed an excellently organized government, and they have founded many admirable institutions. In twenty-five years this new nation will number twenty-five millions of souls and will then be, in many respects, no mean competitor of the United States. And behind this new and powerful community stands the mighty British Empire again, ready and able, with its great navy, to defend the interests of its offspring. I hope most sincerely that we shall always live in peace and harmony with our northern neighbor. I have great respect for her and nothing but the best of wishes for her welfare; but I should be a poor student of history and politics if I did not recognize the possibility of friction with her, and through her with the great empire of which she is a part.

The relation between the United States and the other great Teutonic empire is quite different, seen from the point of view of the world situation. Upon no spot of the earth's surface does there appear any probability or even possibility of a conflict arising between them, in the great work of extending the world's civilization. Germany's chief mission, in this respect,

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

is the continual rejuvenation of the peoples of continental Europe and their preservation against the anarchistic tendencies of the Slavonic races, on the one side, and the tendencies to decadence of the Romanic races, on the other. As I have already indicated, the Teutons have, for the last fifteen hundred years, pursued this mission. Ethnologically, indeed, Germany is not the entire Teutonic world in continental Europe; but the German Empire is the great political representative of the continental Teutons and the moving power in the spread of Teutonism to the other parts of Europe. Continually and irresistibly, this great ethnic force penetrates in all directions, especially towards the southeast, and transforms the lands and peoples with which it comes into contact after its own image. Germany is the great ever overflowing reservoir of ethnic force, which sends its enlivening and fructifying streams in every direction, and as the old races decline and die out replaces them with men of Teutonic blood and Teutonic culture. And then, in the second place, the colonial interests of Germany lie in Africa, where the German Empire possesses a territory four times the size of its European home. The administration of its African possessions will fully occupy the colonial activity of the home government for a century to come. In the pursuit of this mission, therefore, Germany cannot come into conflict or contact with the United States, since the United States plays no rôle in Africa, nor wishes to do so. And when, in the third place, we contemplate the Asiatic policy of the German Empire, we find that the world views and the world purposes of Germany and of the United States go hand in hand; that is, they require that China and middle Asia shall be redeemed, not through the rule over them of Japan or of England or of Russia, nor through a partition of them between the three, but through their own independent efforts and activities, under the influence of the freest commerce and intercourse with all the civilized nations of the world.

When now we bring all of these considerations together and survey them in comprehensive thought, the correct course of our foreign policy reveals itself. Its chief purpose is the maintenance of the independence of China, and the opening-up of

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

China and middle Asia to the commerce and intercourse of the civilized world; and the most ready means for the attainment of these ends are close friendship with the German Empire, a fixed understanding with the German Empire and with China, and the powerful development of our navy and merchant marine. None of this nor all of this signifies war or militarism. It signifies peace, active commerce and friendly intercourse, unbounded prosperity and world civilization. If the United States should, through such measures, make known her fixed foreign policy to the world, there is no power in the world which would or could resist or oppose it. All the possible dangers which might otherwise proceed from the side of England would immediately disappear. The British Empire would find itself compelled to accede to our policy and to give up the senseless, unnatural and highly dangerous attempt—dangerous to the peace and progress of the whole world—to isolate Germany. For a long time I have thought and taught that the freedom, progress and civilization of the world depended much more upon the friendly cooperation of Germany, England and the United States than upon all other forces combined; but I have at length become conscious of a feeling, which is so decided as to amount to a conviction, that this international Teutonic coöperation can be realized only when England becomes fully persuaded that the United States will insist upon grasping the hand of Germany at the same time and with the same sincere cordiality as the hand of England. I am firmly of the opinion that the now existing friendly feeling between Germany and the United States has already exercised a most favorable influence upon the relations between England and Germany. I think that there was a moment a few years ago when, except for this, England would have experienced a much stronger temptation to attack Germany than she did. We in the United States cannot complacently regard unfriendly relations between Germany and England, because, if they should lead to war, they would produce a world convulsion which would greatly injure our own interests and would threaten our own peace. The ultimate results of such a war would be, most probably, the destruction of France and an alliance of the Continental powers this side of Russia

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

against England, the destruction of the German navy and of the German commercial competition with England on the sea, the reëstablishment of England's maritime monopoly and the partition of Asia between England, Russia and Japan. We dare not allow any such results to come to pass, any such world situation to be realized. And we can save ourselves and the world from them by following the course of foreign policy which I have indicated, and, so far as I can see, in no other way.

Let us now turn to the consideration of the chief questions of our internal politics. First, the old question of States' rights and national consolidation presents itself. I had thought that this question was obsolete, that no man in this broad land of ours was quite so backward in his opinions as to think for a single moment that the present commercial and social conditions in these United States could endure for a single day the particularistic politics of the year 1800. But it seems that this question still lingers with us, and that it still offers one of the chief points of distinction between the creeds of the two great parties. I can understand how the men of the period between 1783 and 1860 could follow a particularistic policy. When the inhabited parts of the States of the Union were widely separated from one another, and when intercourse between them was rare, slow and difficult, it was explicable that a man could plant his foot upon his own doorstep and proclaim that spot to be the center of the earth. Also when slave property was secure only under the protection of the several States, which recognized its existence, it was comprehensible that those who had a pecuniary interest in the maintenance of such property should seek to magnify the powers of the States and to reduce the powers of the central government to a minimum. But now that slavery has been abolished and the populations of the several States have so filled out their entire geographical boundaries that one cannot perceive when one passes the imaginary lines which separate them, and commerce and intercourse between the inhabitants of different States have become, in many respects, more active and general than that between the inhabitants of the same State, it is quite astonishing that this old doctrine

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

should come to life again. It is, in my opinion, a real will-o'-the-wisp, and will lead us, should we pursue it, into quicksands and marshes which have no bottom. By this I do not at all mean that there is not a natural sphere of local self-government. The question is not that of a consolidation in principle of all governmental power in the hands of the central government, but of a liberal interpretation of the powers already granted by the constitution to the central government, so that the law shall be made to harmonize with the already existing conditions in the world of fact. There now exists a disharmony between law and fact. The conditions in the world of fact have become much more completely centralized than is recognized by the law; and every American jurist knows that, but for the fact that the legal systems of the several States of the Union are based on the English common law, and that this law has been developed chiefly by judicial decisions, we should now be suffering under an intolerable condition of legal confusion and contradiction, from which we could be rescued only by revolution. So long as the judicial office in the States was held during good behavior, this harmony in the law of the different States was preserved; but, now that the judges in most of the States are elected and serve for a short term of years, it has become seriously impaired, and we find ourselves standing before the alternative of amending the constitution so as to increase the powers of the central government or of giving, through judicial decisions, such a liberal interpretation to the powers already conferred by the constitution on the central government as to bring the law into harmony with the conditions of fact. The central government should regulate and control all commerce and intercourse, except only such incidents thereto as naturally belong to the local police administration. It should create the code of commercial law, fix the law of marriage and divorce and establish the general principles of the criminal law; and it should ordain and control, and in large part administer, the postal and telegraphic systems and the systems of forestry and irrigation. At least so much, if not more, belongs to its natural domain. I make these assertions, not from the standpoint of theoretical reasoning, but from that of the already ex-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

isting conditions of fact. I would only bring the law into harmony with this condition of fact, because I know that the law cannot change the fact and dare not leave the fact unsupported, without producing a convulsion which will bring deep injury to the country. It is therefore quite manifest that we must do all we can by means of a liberal interpretation of the constitution as it is. Even though it were less difficult to bring about a constitutional amendment, it is still better to put a liberal construction upon what we already have than to be forever on the strain of creating something new. Too frequent constitutional amendment undermines the necessary respect for the organic law, and this must be avoided. From this point of view, perhaps, our very difficult process of amendment has its justification. Perhaps we have made it too difficult. Perhaps we thereby throw too much responsibility upon the courts and compel the courts, consequently, to overstep at times the boundary between law and politics. That is also a danger which we must endeavor to our utmost to avoid. It is indeed a narrow way which we tread, but one thing is very clear, namely, that we should recognize the difficult position of the courts and should allow no faultfinding disposition to prevail in regard to them.

This consideration leads us to the second great and all important question of our internal politics, namely, the position of the courts in our political system. Nothing has aroused in my mind such grave apprehensions concerning the future of the great Republic as the now apparent inclination among certain classes of the people to disparage the courts and to undermine their position as the highest interpreters and defenders of the constitutional rights and immunities of the individual. It was, in my opinion, the most intelligent and judicious work of the fathers of the constitution that they placed the courts above the ordinary legislative power as well as above the executive power in construing and protecting civil liberty, and it is also my opinion that the conditions of the present day require, even more decidedly than those of 1787 or of any subsequent period, the maintenance of this position of the courts. In fact I do not

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

comprehend how a great republic with any other relation of its governmental departments can permanently exist. We must not forget that with our system of party politics and party rule the people do not at all regularly govern themselves either nationally or locally. Only when the people form or adopt a constitution or a constitutional amendment do they exercise the law-making power over themselves, and then only approximatively. All other governmental acts, both legislative and executive, are the work of a relatively small number of professional politicians, many of whom are continually working for the advantage of certain private interests and under their influence. The self-deception of our people in regard to this matter would be humorous, were it not so serious. But even though the people should be clearly conscious of the situation, it is not at all certain that they could help themselves. Theoretically at least, the root of the evil lies in the fact that we elect so many legislative members and administrative and judicial officers, and that the professional politicians and the party machinery are indispensably necessary in order to cope with the situation. We are compelled to accommodate ourselves to the system of the party machines or find ourselves before the alternative of party demoralization or the radical reduction of the number of elective offices and positions. It will be a long time, if ever, before the American people will resolve to adopt either of these alternatives, to the exclusion, total or partial, of the other. The American people are fanatically devoted both to the principle of party loyalty and to the system of election of all holders of public power. They consider both as the chief pillars of the republican form of government. We must concede that this is one of those half-truths which arouse the enthusiasm of the masses. If the people really deliberate in their minds over this question at all, they generally think that the party machines and party leadership can be so reformed as to be purified from most of their errors. No people in the world has ever yet succeeded in accomplishing these things, with any considerable degree of satisfaction. That the American people, a people so largely devoted to private interests, will succeed better with them is, at least, extremely doubtful. In my judgment the situation is as

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

likely to become worse as better, as our population increases and becomes even more devoted to materialistic interests and views. As a private man and as a teacher of political science, I see our salvation only in the principles which incorporate the fundamental civil rights and immunities of the individual in the constitution, confide their interpretation and protection to the courts, free the judicial office from all political attributes and incidents and place it above all political and party strife. We may with comparative security allow the politicians to work their will in regard to purely political matters; but when the fundamental civil rights and immunities of the individual are made counters in the political game, then do we become subject to the most grinding and degrading tyranny which the wit of man can devise, namely, the tyranny of a handful of professional, sometimes notoriously corrupt, politicians, who claim to represent the majority party but really represent nothing but a coalition of selfish interests.

To our great good-fortune the national constitution already contains the guaranty of these fundamental rights and immunities and has created the necessary organs and forces for their maintenance and protection. According to its provisions neither the central government nor a State of the Union may pass any bill of attainder or any *ex post facto* law, or make treason anything other than the waging of war against the United States or a State of the Union, or make slavery or involuntary servitude lawful or allow it to exist, or take private property for any but public purposes or without just compensation, or deprive any person of life, liberty or property without due process of law, or deprive any person of the equal protection of the laws, or prohibit the peaceable assembly of the people for the purpose of petitioning the general government for redress of grievances. Other provisions of the great instrument ordain that the judicial power of the United States shall be vested in one supreme court and such inferior courts as Congress may from time to time ordain and establish, that the judicial term shall be during good behavior, that the judges shall receive an undiminishable salary, and that the judicial power of the United States shall extend to all cases arising under the constitution, laws and

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

treaties of the United States, *etc.* There is thus no doubt that the above-mentioned rights and immunities must be finally interpreted by the constitutionally independent courts of the United States—that is, in all questions which may be, in proper form, brought before them—and that the judgments of the courts will set aside and render null and void all laws, treaties or executive orders of every nature and from every source which conflict with the judicial interpretation of these constitutional rights and immunities of the individual. These judgments themselves can indeed be overcome, but only by means of a constitutional amendment.

So much is fixed principle of our jurisprudence and our public law, and neither Congress nor the executive nor the States of the Union have the slightest foundation to stand upon if they or either of them should dispute it. But there are other relations between the judiciary and the political branches of the government, which are not so distinctly fixed by constitutional provision, and which may be so manipulated by Congress and the executive as to bring the courts into a certain dependence upon them. For example, Congress, that is, the national legislative power, has authority to determine the number of members of which the Supreme Court shall consist; to create the inferior courts and to determine the number of members of which each of these shall consist; to fix the salaries of judges and to appropriate the money for their payment; to regulate the appeal of cases from the inferior courts to the Supreme Court and to make exceptions to the same. Further, the president and the Senate have authority, in agreement with each other, to appoint the judges; and finally, upon impeachment by the House of Representatives of Congress, the Senate may by a two-thirds vote remove the judges from office on conviction of treason, bribery and other high crimes and misdemeanors.

It cannot be truthfully affirmed that the president and Senate have ever misused their great power of appointing the judges, nor that the houses of Congress have misused their power of impeaching and removing the judges. Twice in our history it has been claimed, with some show of truth, that Congress has

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

exploited for party purposes its power of creating the inferior courts and fixing the number of the judges in all the courts. The first instance was at the beginning of the last century, the second some forty years ago. Even if the misuse of power be conceded in both instances, it remains a rare occurrence. But Congress can with perfect correctness be accused of a constant niggardliness in the creation of the necessary courts and judgships to discharge promptly the judicial business of the nation, and there is not the slightest doubt in my mind that Congress has made an exaggerated use of its power to regulate appeals of cases from the lower to the higher courts, a use so exaggerated as to amount to a real usurpation. Congress has not only asserted the power to distribute the judicial business of the United States between the several classes of courts but also to determine *in what the judicial power of the United States shall consist.* The provision of the constitution determinative of this subject provides that the judicial power of the United States shall be vested in one supreme court and such inferior courts as Congress may from time to time ordain and establish, but does not at all vest in Congress the power to determine in what the judicial power of the United States consists. This latter is, therefore, purely a constitutional question, and the final determination of such questions is, as we all well know, the highest and most important function of the Supreme Court of the United States itself. For example, propositions have appeared in Congress for withdrawing from the courts the power to issue injunctions in certain cases and for modifying and limiting this power in other cases. In my opinion, it would have been a clear usurpation to have enacted any such propositions into law. The question whether the national courts have the power to issue injunctions and upon what occasions is simply the question whether the function is contained in the judicial power of the United States. If it is, then it is already vested in the courts of the United States by the constitution, and the Congress has no constitutional authority to alter it one jot or tittle. And whether it is contained therein or not is no question which the Congress may finally determine, but one which the Supreme Court itself must finally determine, as the ultimate interpreter

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

of the constitution. It is of the very highest importance to the maintenance of our system of individual rights and immunities and of our system of limited constitutional government that we correctly understand this question, and that we do not allow ourselves to be led astray by the senseless clamor against "government by injunction," as the empty phrase goes. As our society and our business relations have now formed and adjusted themselves, we are compelled to prevent the wholesale injury and destruction of property either by the judicial power through injunction or by military power. We can take our choice between the peaceable judicial process or militarism. There is no third way. If anybody thinks that a genuine American prefers anarchy to militarism, he makes, in my opinion, a prodigious mistake. I am myself an old American; my fathers have lived in this land since 1638; and I believe that I represent the American spirit correctly when I say that we prefer the rule of the saber to the rule of the mob. It is quite true that we Americans are no friends of too much government, but we will obtain at every cost the security of life and property.

I have furthermore no sympathy with the assertion that through the employment of the writ of injunction the enjoined party is deprived of his constitutional rights to a trial by jury. I consider that assertion to be the crudest kind of sophistry. In no system of jurisprudence which the world has ever yet invented has any person been given jury protection against judicial prosecution for contempt of a judicial order. When a person disregards the order of a court against the injury or destruction of property, he has committed two offences, not one simply, the offence of contempt of court and the offense of trespass. Only in prosecutions for this latter offense has the trial by jury been accorded, and that remains to the offender, in such a case, after he shall have satisfied his sentence for contempt. An entirely new right is also claimed when the demand is made that the question whether a contempt has or has not been committed must be determined by a jury before punishment therefor can be inflicted. That has never anywhere been established judicial practice, and such a practice would destroy

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

the power of the courts. Disobedience to judicial orders is one of the most serious crimes that can be committed. It is even more dangerous to the existence of the state than high treason itself. It is simply anarchy. There is only one sound view upon this subject, namely, that the court must itself decide whether its order has been disobeyed or not, and that there can be no appeal from its decision. In the management of all human affairs we come finally to the point where we must trust the ultimate decision to some constituted organ. The only question that remains is as to the organ which shall possess this ultimate authority. We, the people of these United States, have, by a perfectly clear and well understood provision of our constitutional law, entrusted this power, in all cases arising under the constitution, laws and treaties of the United States, to the courts of the Union, and neither Congress nor the executive nor both together have the slightest constitutional power to modify or limit this power in any respect whatsoever. That can be done only by the sovereign people, through constitutional amendment. And if the people should undertake so to effect it, it would be the most striking possible proof that the people had unlearned the fundamental principles of constitutional rights and constitutional limitations on governmental power and were on the point of reverting to the barbarism of self-help or the tyranny of militarism.

There is, furthermore, no basis for the assertion that the present use of the injunction is a novelty in judicial practice. The courts have always used this means of preventing the destruction of or injury to property when it was apparent that satisfactory compensation for the damage could not probably be obtained. Perhaps it is true that the framers of the constitution did not divine that this means would be employed on such a grand scale. Neither did they foresee that the occasions upon which it should be employed would become so numerous and so important. It is nothing more nor less than the old story that the constitutional powers of the courts, as those of the other branches of the government, must be always construed from the point of view of existing conditions. We may, indeed, as free citizens of the Republic, criticise, in special cases, the de-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

cisions of the courts as well as legislative acts and executive orders, but if we would preserve the life of the great Republic we must hold fast to the historical and constitutional relation between the judiciary and the political branches of the government, and defend the judicial power of the United States, as interpreted by the courts themselves, against all encroachments either by Congress, the executive or the States of the Union. This great principle is, next to the constitution itself, of which it is, indeed, the most important part, the chief support of our civil liberty, and without it the provisions of the constitution in reference to our individual rights and immunities would be without any practical value. It is a false democracy which indulges itself in abuse of the courts—a democracy which is on the point of degenerating into Cæsarism.

The third great question of our internal politics to-day is the question of the so-called "trusts," that is, of the great corporations, which either have a strong public side or threaten to monopolize some branch of trade. That the government shall take an attitude in respect to them is made necessary by the principles that the government must prevent them from usurping anything in the nature of a governmental power and must protect the civil rights and immunities of the individual against them. It is also true that these corporations themselves have constitutional and legal rights and immunities and that it is the duty of the government to protect and uphold these also.

The history of the power and the position of the corporations in the United States is briefly as follows. It was in the beginning a fundamental principle of American political science that government should undertake nothing which could be better done by individuals or private combinations of individuals, and that individuals or private combinations of individuals could do everything more advantageously than government except protect the country against foreign aggression, maintain the public peace and administer justice. A second original principle of American political science was that when, through practical experience, it became manifest that the powers of government should be expanded, the several States should

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

take the first step. And a third principle was that government should have no source of income except the lawful taxes and imposts collected from the people. When now the building of factories and railroads began, the whole situation was most favorable to private enterprise in both directions. The people wanted them, and neither the central government nor the States of the Union were in a position to provide them. They had not, according to the original principles of American polity, the power, and they had not, in the existing conditions of governmental revenue, the means. They could however, confer upon private undertakings in both spheres many advantages. For example, the central government could so fashion the system of duties upon imports as to give protection to domestic manufacturers against foreign competition and could make gift of great stretches of the public domain to the railway corporations; and the States of the Union, from which the corporations received their charters and concessions, could be very generous, if they so pleased, with the privileges conferred. At the outset all this appeared promotive of the public welfare. It undoubtedly was so, momentarily at least. But the time soon came when the weak points in this system began to appear. First, the protective system appeared to the people of the South to give an unfair advantage to the people of the North, and in the great struggle of 1832–33 between South Carolina and the Union over this question it was for a period of thirty years set aside, only to be restored again by the victorious North as a part of its victory over the slave power. Not only was the system restored, but it was advanced to a position of power over the government itself, as the chief source of financial contribution to the support of the reigning party organization—a position which enables it to increase indefinitely its demands and to prevent any reform of its privileges on the basis of sound economic principle. The politicians, even the demagogues among them, do not dare to grapple with it, because they fear to cause thereby the drying-up of the sources of party contributions.

Later, naturally, the consciousness of the people awoke to the fact that the railway corporations were abusing the great priv-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

ileges conferred by government upon them. They not only charged too high rates, but they favored some persons over others and some places over others. They gave the great shippers rebates and placed them thus in a position to undersell and ruin the lesser men. They increased their capital stock without any corresponding increase in the value of their property, and they created and sold to the public their obligations in a reckless manner. These things are all well known and it is not necessary to dwell further upon them. First the State legislatures and then at length Congress undertook to meet these evils. Louder and louder have the complaints of the people become against them, and the legislation both of the Congress and of the States has become more and more radical in satisfaction of these complaints, until at last the governmental attack on predatory wealth has become, very nearly at least, an attack on the principle of private property itself. We have thus at last arrived at the point where we must call a halt and put the whole situation to the test of an intelligent and an unprejudiced consideration.

First, then, no sane mind can entertain any doubt that our modern business life and prosperity must be mediated and handled chiefly by corporations. The corporations have, therefore, their justification, their *raison d'être*. To define properly their functions, their rights and their privileges, and to protect and maintain them in the just exercise of the same, is one of our most pressing duties. In order to accomplish this successfully we must, at the outset, fix in mind the concept of the modern corporation, especially the modern railway corporation. Originally such a corporation was the totality of the stockholders. Originally, a relatively small number of men, living in the same place or neighborhood, or at least known to each other personally, formed a real community of stockholders, obtained a charter from their State legislature, built a few miles of railroad, elected their directors and officers in full assembly and held them under strict control. They came together often and regularly, and after full discussion and by full vote they fixed their policy and adopted their regulations. The community of the stockholders was thus the

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

corporation, the real responsible body, and the directors and officers were in reality their agents. But all that is now greatly and radically changed. Through the mediation of the stock exchanges these enterprises have developed in the most extended and unexpected manner. The stockholders of corporations have become for the most part strangers to one another. Among them are now to be found widows, orphans, married women, minors, foreigners, educational institutions, churches, charitable institutions, *etc.* There is never a full meeting of stockholders. The most of them vote, if they vote at all, by proxy, and the officers and directors represent them. In fact the president and directors of the corporation have now become the controlling and responsible body, while the stockholders are a mass of disconnected individuals, whose property is under a sort of guardianship of the president and directors. It is a very common thing to hear the president of a corporation speak of "his stockholders." "I have given my stockholders a six percent dividend; what more can they expect?" This sounds boastful, but there is a significant truth contained in it, a truth which we must deeply ponder, if we would develop a sound legislative policy in regard to corporations. It will no longer answer to punish the stockholders for the misdeeds of the corporation, simply because they are not the guilty parties and it is no longer right and just to hold them as such. This only gives to the officers and directors of the corporation better opportunities to plunder the stockholders and will lead finally to the confiscation of the railroads by government. In the whole of legal history nothing more clumsy and unsuccessful can be found than our legislation in regard to corporations. At almost every step we have punished the innocent and furthered the interests of the guilty. If government were in secret collusion with the robbers to plunder the helpless stockholders and bondholders, it could hardly have proceeded much otherwise than it has. And this is all the more surprising since the matter is to an impartial judgment quite simple. Control of all commerce by the central government, precision in the charters of concessions to carrying corporations, a liberal maximum of rates, a fixed minimum of rates which will prevent the

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

greater corporations from ruining the lesser by underbidding, prohibition of preferences and favoritism and personal responsibility of the officials and directors for the violation of the law —this appears to the academic mind, at least, to be the true line of development, the line which would combine clearness and effectiveness of action with the preservation of both public and private interests and with the just and righteous vindication of the law. I do not think that the stockholders and bondholders of the corporations would have any objections to a system of legislative control developed upon this line. I think they would welcome it. I feel quite sure that objections to it would proceed from the officers and directors of the corporations and from the professional politicians, because it would deprive the former of the opportunity to plunder the stock- and bondholders and escape punishment for their own misdeeds, while the latter would no longer be able to secure party contributions from these managers of the corporations, whose illegal acts they have been accustomed to let pass unnoticed in consideration of such contributions. To sum up the situation in a sentence, it seems to me that we must say that the politicians granted the corporations, at the outset, more than was just and fair, viewed from the standpoint of the public good, partly, at least, in order to be able to secure from their managers contributions to party expenses; that the corporations have exploited their liberal grants in so selfish, sometimes so shameless, a manner that they have at last exposed themselves to a popular revolution; that the people have not yet learned to distinguish between the old conception of a corporation and the new one, based on present conditions, and are inclined still to hold the stock- and bondholders responsible for the acts of the corporations; and that the politicians are quite willing to allow the people to grope about in their ignorance, in order that their old allies, the officers and directors of the corporations, may escape just punishment and may remain in possession of the means, and rest still under the obligation, to continue their contributions to the party treasuries. I have of course no sympathy whatsoever with the officers and directors of corporations who have abused their powers and opportuni-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

ties, but I consider the professional politicians still more dangerous enemies to the public welfare and the public morals. And yet we must have professional politicians and extraordinary contributions to party expenses, until we shall have brought about a very great change in our political system and our party practices. So long as we have so many elective offices and positions, and so long as the people will not contribute generally and equally to the party purposes, we must have professional politicians and extraordinary contributions. In other words, we are all responsible for the present state of affairs, and we dare not in justice ascribe the responsibility for it to certain persons or to certain classes of persons and punish them with severity. Each of us must first do his own duty towards the maintenance of the necessary political parties in order that the party managers may have no excuse to solicit extraordinary contributions from those seeking privileges and favors from government. Then, and not till then, can we hope to reform the protective tariff system upon reasonable lines and to deal with it as an economic question; then only can we undertake to correct the errors of our exaggerated elective system in the lower grades of offices; and then only shall we be in a position to visit the violations of the law upon the really guilty and hold them to strict account.

JOHN W. BURGESS.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

THE COURTS' VIEW OF INJUNCTION IN LABOR DISPUTES

THE question of the issue of writs of injunction in labor disputes has been for a long time past one of increasing importance. It has within the last months assumed an aspect even more grave, for there are certain forces at work which are tending to make the issue one between classes or, more positively stated, an issue which is helping to array one class against another. The representatives of organized labor have become acrimonious in their denunciation of this use of the writ and energetic in their demands for a modification of the authority of the courts in this direction. On the other hand, while the employers of labor have been less outspoken, they seem to rest in the consciousness that they have the decided advantage of position. "The courts are with us," seems to be their attitude, "let others object who will."

While these two interested parties have been lining up on the question, the more disinterested public has been slowly realizing the situation. During the past year it has been possible to detect in many quarters a slowly forming opinion that perhaps after all the advantage is not equally distributed, that the employer seems to be largely right in his supposition that the courts are with him. The development of this opinion has been materially accelerated by the utterances of President Roosevelt. In March, 1906, the president was quoted as saying to a delegation of the American Federation of Labor: "As for the right of injunction, it is absolutely necessary to have the power lodged in the courts, though, of course, any abuse of the power is strongly to be reprobated." In his message of December, 1907, the president wrote: "Instances of abuse in granting injunctions in labor disputes continue to occur, and the resentment . . . continues to grow. . . . I am constrained to express the belief that for some of [these attacks] there is warrant. The question is becoming more and more one of

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

prime importance." Yet all through his dealing with the subject the president has been careful to draw the distinction between the dangers of the abuse of the injunction and the advantages of its proper use. "The process of injunction is an essential adjunct of the court's doing its work well, and as preventive measures are always better than remedial the wise use of this process is from every standpoint commendable. But where it is recklessly or unnecessarily used the abuse should be censured." In March, 1908, in a special message, the president urged legislative action; but the leaders of the Republican party in Congress were unable to agree upon the terms of a bill.

Failing to secure action from Congress, the labor leaders have brought the question before other representatives of the American people. During the past summer they have carried their demands to the national party conventions and have made a heroic effort to induce the platform builders to accept their plank *in toto*. Their limited success has pushed the matter into politics to a greater extent than ever before. This effort to make of it a party issue is greatly to be regretted.

There is no longer a doubt of the existence of a popular demand for the limitation of the courts in the exercise of this power to issue injunctions. There is, however, in the public discussion, little opportunity for the courts to speak on the matter. It is therefore only fair that the various expressions of the courts themselves should be considered, and it seems probable that a presentation of their views will contribute to the attainment of a right judgment. These views are found widely distributed throughout the large number of decisions rendered in cases where the issuance of the writ has been the question before the court. The embarrassment has been, from the beginning, to select the clearest and most enlightening statements from the large number that bear upon the point. Those which follow are in no sense exceptional. They proceed from men whose views on the economic and social questions involved doubtless differ widely, and their varying views have beyond question given a direction, or at least a tone and color, to the conclusions reached. While this might have been expected to

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

lead to some confusion as far as conclusions are concerned, yet such is not the case. Whatever differences of opinion may exist as to personal view, there is a singular unanimity of opinion in the conclusions reached. This comes doubtless in part from the legal viewpoint which all take as a result of professional training and in part from the natural attitude of any branch of government to assume to itself all possible authority. This entire matter may be summed up by anticipating a single brief sentence: "It is too late to doubt the jurisdiction of the court of equity to grant relief. . . . The adjudged cases seem to be all one way."

Before proceeding with the citations it may be well to qualify all of them with the statement that they are written, as legal opinions are always written, with reference to particular circumstances. The circumstances in each case have of course a direct bearing upon the conclusions. It is only in connection with the special circumstances that the general statements are made. But while this is true, it is safe to proceed on the basis that such statements may be taken at their face value. Evidence of this, if any is necessary, is found in the fact that, when in the decision of one case the court cites the words used in the decision of a previous case, it is the form of the general statement that is quoted as expressing the common principle involved in both cases.

It has seemed best, in the interest of clearness to the reader, to present the utterances of the court in something of a systematic order. The various arguments seem to fall naturally into the following arrangement, and in accordance with that arrangement they are discussed in these pages: I. The relation of the injunctive process to constitutional rights, especially to the right of jury trial. II. Considerations regarding the need for the writ: (1) the difficulty in establishing the facts; (2) the legality of the acts when finally established as facts; (3) the distinction between civil cases, criminal cases and cases in equity; (4) the desire to secure order by any means necessary. III. The difficulty of determining to whom the injunction should apply and what acts should be enjoined. IV. The importance of precedents.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

I

It is often contended that the court, by issuing the writ of injunction and summarily punishing those who violate its commands, arbitrarily deprives the persons concerned of their constitutional rights. The right most frequently named in this connection is the right of trial by jury. These objections are frequent indeed, and no one who is at all conversant with the current labor literature can doubt the earnestness and persistence with which they are urged. On this point the courts do not often speak with very great fullness. They apparently assume that their constitutional power to punish those who disobey their injunctions is fully established. Yet in a few cases the arguments before the court have been so squarely based on the right of a jury trial that the court has embodied in its decision a very full discussion and a very explicit statement of conclusions.

For the presentation of both sides of the question one does not have to go outside of the court records. Within these records may be found a ringing protest, based on these very considerations of constitutionality, against the injunction as applied to disputes between employers and employees. A dissenting opinion in the case of Hopkins *v.* Oxley Stave Company[1] urges the point with a show of feeling not often found in judicial utterances—with something, indeed, of the passion of the advocate. The entire opinion is well worth reading, and it is to be regretted that its length makes it impossible to reproduce it in full. It seeks to counteract an alleged tendency of the courts to extend the use of the injunction to unjustifiable limits, endangering the more fundamental constitutional rights of the citizen. In answer to the arguments urged in favor of the injunction—that the injunction is a "swifter and speedier mode of dealing" or a "short cut" to the desired end, that it "avoids delay and uncertainty incident to a jury trial," "occasions less expense" and "insures speedier punishment"—is opposed the conclusion that, conceding these pleas to be true, they would justify mob action. An energetic protest is then

[1] U. S. Circuit Court of Appeals. 83 Fed. Rep. 912.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

made against the language in which such bills are framed. Parts of the bill are quoted, showing that the words "conspiracy," "threats" and "coerce" are freely used. "Indeed," the justice continues, "the plaintiffs' case is made to rest upon the use of these terms. It is important, therefore, at the threshold, to enquire what is meant by the use of these legal epithets in this case. Unexplained they have an evil import." A definition of each term in question is cited and a comparison is made with the alleged acts. "It is not true that there is nothing in a name. When for 'conspiracy' we substitute 'agreement,' and for 'threats' a 'notice,' the whole fabric of the plaintiffs' case falls to the ground." The opinion here quotes from Lieber, *Civil Liberty*, "There are psychological processes which indicate suspicious intentions"; and adds:

> Among them is the use of high-sounding and portentous terms, from which much may be implied or imagined, instead of using plain and common words, which accurately describe the action and leave nothing to implication or imagination. If an act done or threatened to be done is lawful, it cannot be made unlawful by giving it a name which imports an illegal act. Names are not things. It is the thing done or threatened to be done that determines the quality of the act, and this quality is not changed by applying to the act an opprobrious name or epithet. . . . "Conspiracy" sounds portentous, but in this instance its sound is more than its meaning. As here used, it describes a perfectly innocent act—as much so as if the charge was that the defendants "conspired" to feed a starving comrade or to bury a dead one.

From this the opinion goes on to an even more important objection to the grant of the writ in this case. "It is vain to disguise the fact that this desire for a short cut originates in the feeling of hostility to trial by jury—a mode of trial which has never been popular with the aristocracy of wealth, or the corporations and trusts." This assertion is followed with a plea for the maintenance of jury trial. This form of trial is at the basis of our constitutional liberties. It has been handed down to us as a result of a long and desperate struggle, reaching far back in English history. Some of the early cases are referred to as emphasizing the difficulties and dangers involved in the

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

earlier phases of this struggle. Finally, the elasticity of the common law in its application to injunctions is summed up in the following words: "In that 'codeless myriad of precedents' running back to the dark ages called the 'common law,' it is not difficult to find a precedent for inflicting any injustice or oppression on the common people."

Judges frequently refuse to grant injunctions, and even in proceedings for the punishment of contempt dissenting opinions have been written against a decision to punish, but seldom, if indeed ever, has such a vigorous protest come from such a source. It serves to emphasize by contrast the unanimity of opinion on the part of the courts that the writ of injunction is an entirely justifiable procedure when used with discretion.

The opinion above cited was written in 1897. In 1901, in Underhill *v.* Murphy,[1] another judicial protest was registered. This time it came from an inferior state court. The court admitted that it was clearly its duty "vigorously and adequately to protect" the right of a man in his business. The important question, however, was, in the mind of the court, how such protection should be extended. Though this case was appealed and the decision reversed,[2] yet the opinion of the inferior court brings out so clearly the point under discussion that it is worth citing. If the relief sought is to be granted by a process of injunction, this, says the court,

> means that a judge—one individual—sitting in equity must hear the evidence, determine the facts, convict the defendants and then, by fine and imprisonment, enforce his judgment; that no jury shall intervene, and that no barrier and no safeguard shall stand between the will of the judge and the liberty of the defendants. . . . This would seem a strong and harsh doctrine. . . . To carry out the doctrine contended for by counsel for plaintiff in this case would mean the substitution of judges for juries. It simply means to vest in one man the right to try, convict and punish without the intervention of a jury. . . . [Courts were originally intended] to afford remedy for wrongs committed and to enforce rights, [not] for the purpose of enabling a judge thereof to direct men what they should or should not do.

[1] Ky. Circuit Court. U. S. Department of Labor Bulletin no. 37, p. 1203.

[2] Ky. Court of Appeals. 78 Southwestern Rep. 482.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

The injunction was to be used only in extreme cases, where no other remedy existed, and only for the purpose of preventing irreparable injury, and, finally, it was always to be used with extreme caution. In this case it was admitted that property rights had been violated and that a wrong had been committed. The law of the state, however, afforded remedy full and complete, but in the criminal branch, not in equity.[1]

These two opinions—the one a dissenting opinion and the other an opinion of an inferior court not sustained by the court of higher jurisdiction—serve in a negative way as an emphasis of the importance that the judges themselves attach to this line of argument. To turn to a positive statement of the court's own justification of the writ of injunction, so far as fundamental constitutional rights are concerned, we may note the reply to the opinion last cited. Referring to the fact that the circuit judge had refused to issue a writ on the ground that the criminal courts were open and that to enjoin in this case would amount in substance to the assertion of the right of a judge to try and convict for a criminal act without the intervention of a jury, the highest court of the state formulates its objection to such a conclusion in the following line of reasoning. Suppose that the defendants were about to slide the plaintiff's house with his family in it into the river.

An injunction would not be refused on the idea that, if they thus drowned any of the people in the house, they might be punished for murder, or, if they destroyed the house only, they might be indicted under the statute for the willful destruction of private property. The reason is plain: the punishment of the defendants for murder or for the destruction of the house, while it would vindicate the majesty of the law, would not help the plaintiff in any way. To relegate him to the processes of the criminal law is to allow his property to be destroyed, and to give him no remedy therefor but the satisfaction of seeing the wrongdoers punished. The inherent and inalienable right of acquiring and protecting property . . . means nothing if it means

[1] It is noteworthy that judicial criticisms of the use of the injunction in labor disputes come mainly from the elective judiciary and especially from local judges elected for brief terms and qualified to serve again if reëlected. These conditions tend to make judges especially susceptible to political considerations.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

only this. If a man must stand by and see his property destroyed, and has no remedy but the slow process of the criminal law, which only punishes the offender but restores nothing to him, then the constitutional guaranty of the enjoyment of life, liberty and property under the law is a meaningless generality. If, in this case, the defendants are fined in the police court, this will not restore to the plaintiff the loss he has sustained by reason of the interruption of his business and his consequent inability to carry out his contracts. When his customers are driven away, and the good will of his business is destroyed, it will be too late, so far as he is concerned, for the punishment of the appellees by the criminal law to reëstablish his ruined business or even prevent future loss.[1]

Taking up one other point, the decision makes reference to the alternative of binding one over to keep the peace. Such a step is a proceeding by the commonwealth. If a bond is required it is taken to the commonwealth. But the plaintiff is entitled to a remedy in his own name. The fact of a commonwealth securing a bond for good behavior is immaterial, "for both proceedings may be prosecuted at the same time, one to prevent the commission of offenses, the other to preserve the plaintiff's property from destruction."

There is however another case that takes up the question of constitutionality more thoroughly and more pointedly than the one just cited, *viz.* Union Pacific Railway Company *v.* Reuf.[2] The decision is too long to be cited in full, but certain parts of it are fundamental. First are considered those parts of the constitution that refer to the right of jury trial:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed [United States Constitution, amendment 6].

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reëxamined in any court of the United States, than according to the rules of the common law [United States Constitution, amendment 7].

[1] Underhill *v.* Murphy (cited above: 78 Southwestern Rep. 482).

[2] U. S. Circuit Court. 120 Fed. Rep. 102.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

In addition to these provisions of the federal constitution, the constitution of the state is quoted: "The right of trial by jury shall remain inviolate" (Nebraska State Constitution, article 1, section 6); and the additional fact is pointed out that this provision in substance appears in all the state constitutions. These constitutional provisions have been the cause, the court continues, of a "great deal of inflammatory public speech and literature, all proclaiming that in no proceeding other than by jury trial can any person be subjected to fine or imprisonment." Because of this many persons have been misled into the belief that the "courts are usurping authority in dealing by injunction with those who interfere with the rights of others." "If any case, English or American, federal or state, could be found upholding such a claim, it could be said to be debatable." No case, however, exists.

When these constitutions were adopted courts of equity existed, and equity jurisprudence was recognized. And as plain as are these constitutional provisions, they are continuously misunderstood, because they are not correctly read. The provision above quoted from the United States constitution does not say that in all cases the right of trial by jury shall exist. But in the one case it shall exist in all criminal prosecutions, and in the other the right of trial by jury in common law actions shall be preserved.

In the state constitution quoted the expression is

"shall remain inviolate." In neither case is the right to be enlarged. In the one case it shall be preserved, and in the other remain as it was. And whether to be preserved or remain as at common law, or as of the date of the adoption of the constitutional provisions, is not now material. But the cases cited have to all lawyers and to all courts forever put this matter to rest.

So also in the case of the fifth amendment to the federal constitution, which guarantees that no person shall "be deprived of life, liberty or property, without due process of law," and in that of the fourteenth amendment, to the same effect, the meaning is "that neither Congress nor any other governmental agency shall ever deprive any person of either liberty or prop-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

erty excepting by due process of law." From this view it of course follows that the court through the use of the writ of injunction is in no way violating the rights guaranteed by the constitution, but is, on the contrary, protecting persons in the exercise of their constitutional rights.

It is sometimes said that the right of a court of equity to interfere by injunction in criminal cases was never asserted until the beginning of contests between labor and capital in the form of strikes. This statement was made by the inferior court in the Underhill case, cited above, but is not supported by the weight of opinion as expressed in other decisions. In fact, almost as a unit, the courts deny that the injunction is an instrument newly made over into a weapon for the breaking of strikes. A single brief quotation from one case will serve as a type of the opinion expressed in a long line of decisions. In United States *v.* Sweeney[1] is found the following:

> To claim that the exercise of the power to protect by injunction property and persons engaged in lawful business enterprises in proper cases, and where the remedy at law is inadequate and the injury irreparable, is new, or that such proceeding is a modern invention of the federal courts is as stupid as it is untrue.

In support of this contention the history of injunction is reviewed, to show that the court has the right to punish a violation of injunction without a trial. The conclusion of the reasoning is that in the case in point there is no violation of the constitutional right of trial by jury.

The constitutionality of the injunction process is urged in a more aggressive spirit in the Debs case.[2] Here it is based on the assumption that necessity is really the first law and that constitutionality must be implied. On this issue we read, in the decision rendered by the Supreme Court of the United States:

> Nor is there in this any invasion of the constitutional right of trial by jury. . . . The power of a court to make an order carries with it

[1] U. S. Circuit Court. 95 Fed. Rep. 434.

[2] *In re* Debs, 158 U. S. 564.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

the equal power to punish for a disobedience of that order, and the inquiry as to the question of disobedience has been, from time immemorial, the special function of the court. And this is no technical rule. In order that a court may compel obedience to its orders it must have the right to inquire whether there has been any disobedience thereof. To submit the question of disobedience to another tribunal, be it a jury or another court, would operate to deprive the proceeding of half its efficiency. [Here follow two citations from earlier cases.] "The summary power to commit and punish for contempts tending to obstruct or degrade the administration of justice is inherent in courts of chancery and other superior courts, as essential to the exercise of their powers and to the maintenance of their authority, and is part of the law of the land, within the meaning of Magna Charta and of the twelfth article of our Declaration of Rights." "If it has ever been understood that proceedings according to the common law for contempt of court have been subject to the right of trial by jury, we have been unable to find any instance of it." In brief, a court, enforcing obedience to its orders by proceedings for contempt, is not executing the criminal laws of the land, but only securing to suitors the rights which it has adjudged them entitled to.

The constitutional issue was raised with peculiar, not to say cynical, frankness by counsel for the defendants in Hamilton Brown Shoe Company *v.* Saxey.[1] Their argument, as summarized in the decision, appears to have been as follows: The defendants admitted that they were doing the wrongful acts charged, yet asserted that the court had no right to interfere. "They say that what they are doing is a crime, by the state law of this state, and that for the commission of a crime they can only be tried by a jury in a court having criminal jurisdiction." The counsel even quoted the statute showing that their acts were criminal, and claimed that the constitution guaranteed them "the right to commit crime with only this limitation, to wit, that they shall answer for the crime" in a legal way. The court's comment runs as follows: "The train of thought put in motion by the argument . . . leads only to this end, to wit, that the constitution guarantees to every man the right to commit crime, so that he may enjoy the inestimable right of trial by jury."

[1] Mo. Supreme Court. 32 Southwestern Rep. 1106.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

II

While the question of constitutionality is perhaps the one of prime importance, and the one in which most of the popular discussion centers, it is by no means the only one that the courts have had to solve. There are other points at which the attack has been only less vigorous than in the matter of jury trial, and these points have been covered with considerable fullness in many of the decisions.

(1) One of the most perplexing of these questions is that of establishing the real facts of the case in the absence of a jury. This difficulty is due, first of all, perhaps, to the conflicting evidence submitted. Sworn statements are often made that directly contradict one another. Between these the court has to decide, with the duty, on the one hand, of fairness to the parties to the suit and, on the other, of justice to the public, while at the same time the dignity of the court must be maintained. This difficulty would undoubtedly be greatly minimized if strikers did not so often try to get so near to the dividing line between the legal and the illegal. References to but few of the many cases will suffice to point out how real this difficulty is. In Allis Chalmers *v.* Reliable Lodge,[1] the court laid strong emphasis on the conflict of evidence and reached its conclusion only after balancing the probabilities in the case. In Consolidated Steel and Wire Company *v.* Murray,[2] the conflict of evidence was even more serious. The company here filed thirty-eight affidavits, which, in the words of the court, "fully support the averments of the bill, and the circumstances of many cases of assault and maltreatment are detailed with the names of the defendants concerned therein." Against this evidence the defendants filed forty-seven affidavits. "Each individual defendant makes affidavit denying any acts of intimidation or violence attributed to him, and enters upon a general denial, which is substantially the same in all the affidavits." Evidence was submitted from policemen on duty at the time and place to the effect that they had not seen any disorder.

[1] U. S. Circuit Court. 111 Fed. Rep. 264.

[2] U. S. Circuit Court. 80 Fed. Rep. 811.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

The court discovered that there were men among the defendants of the same name as the policemen, and adds: "Whether they are relatives of the policemen of the same name, who are affiants, does not appear." Affidavits were filed from others, "more than a score," "employees and others," "including persons entirely disinterested," reciting acts of "intimidation and violence by the defendants and by others of the mob, assembled morning and evening and day after day" at stated places, "assaulting, beating, wounding and maltreating them." Attention is called by the court to the fact that the affidavits submitted by the defendants do not make any denial of the specific averments of the bill or of those of the company that there were continuous riotous assemblages doing acts or making threats of violence. This is "tantamount to an admission of the averments of the bill, notwithstanding the denials of the defendants that they participated in the unlawful acts of the rioters." "It is enough to say of these affidavits," the court concludes, "that they are so overwhelmingly contradicted as to be utterly discredited. If the affiants are not forsworn, they are, to put the matter in the most charitable light, gifted with such facility for appealing from their knowledge to their ignorance as to be altogether unworthy of belief." "These averments, taken together, make it clear" that there were lawless acts for which the defendants were responsible.

Again, in Herzog and Erbe *v.* Fitzgerald,[1] both threats and actual violence were detailed in the affidavits, while the defendants reiterated the general assertion that "at no time were any threats, force or intimidation used or attempted to be used," and that what was done was done "in a peaceful and lawful way." In Jonas Glass Company *v.* Glass Blowers' Association,[2] there was again a conflict of evidence; and here the court did not find that illegal acts were established with sufficient clearness to warrant the issue of the writ.

(2) After the facts of the case have been determined, in face of conflicting evidence, it remains to say whether the acts

[1] N. Y. Supreme Court, Appellate Division., 74 App. Div. 110.

[2] N. J. Court of Chancery. 54 Atlantic Rep. 567.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

attributed to the defendants constitute violations of the law. This question is regularly complicated with the question of conspiracy—the question how far the number of participants changes the legal nature of an act. Of the many cases in point, only a few need to be cited to show the difficulties that are encountered in answering this question. When intimidation is such as to deter one from going to seek work, it becomes force and violence. *Cf.* American Steel and Wire Company *v.* Wire Drawers' and Die Makers' Unions.[1] As regards picketing, it is maintained in Beck *v.* Railway Teamsters, Protective Union[2] that "it will not do to say that these pickets are thrown out for the purpose of peaceable argument and persuasion. They are intended to intimidate and coerce." The definition of the word "picket" as found in the dictionaries is quoted: "A body of men belonging to a trade union sent to watch and annoy men working in a shop not belonging to the union, or against which a strike is in progress." The court comments: "The word originally had no such meaning. This definition is the result of what has been done under it, and the common application that has been made of it." In Cumberland Glass Company *v.* Glass Blowers' Association[3] coercion is carefully distinguished from persuasion. The company alleged a list of acts committed by the strikers, and the strikers, in their reply, practically admitted the allegations except as regarded acts of violence. The writ was issued, but only against those who were shown to have used force or coercion. It is agreed, says the court, that coercion is illegal, but "in respect to what acts are to be regarded as coercive there is naturally more difference in judicial sentiment." The force of the testimony is that while only persuasive methods were contemplated, "coercive measures were in fact resorted to." It appears plain from the evidence that the crowd of "guards," judged by its size and acts, was "designed for coercive as well as persuasive purposes." In Jordahl *v.* Hayda,[4] the appellants urged that the words used

[1] U. S. Circuit Court. 90 Fed. Rep. 608.

[2] Mich. Supreme Court. 77 Northwestern Rep. 13.

[3] N. J. Court of Chancery. 46 Atlantic Rep. 208.

[4] Cal. Court of Appeals 82 Pacific Rep. 1079.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

in the finding, "threats," "intimidation," "driven away," "prevented" *etc.* implied force, and that the evidence did not show that force was used. The court held, however, that a show of physical force was not necessary.

> Persons might have been "prevented" from patronizing plaintiff, or "driven away" from his place of business, or "interfered with" in an attempt to go into or out of his restaurant, by conduct falling short of actual violence, and yet the conduct might be of such character as to effect the object of defendants to the injury of plaintiff in a way which could not be adequately measured in an action for damages.

In O'Neill *v.* Behanna, the court said that the testimony submitted must be read "in the light of experience and a knowledge of human nature."

> The strikers and their counsel seem to think that the former could do anything to attain their ends, short of actual physical violence. This is a most serious misconception. The "arguments" and "persuasion" and "appeals" of a hostile and demonstrative mob have a potency over men of ordinary nerve which far exceeds the limits of lawfulness. The display of force, though none is actually used, is intimidation and as much unlawful as violence itself.

According to the testimony, the strikers had been assembling in numbers at the railway station to meet the incoming trains and to persuade the men that were arriving not to go to work. Referring to this policy, the court said: "The presence [of the men at the depot] indicates their real intentions too plainly for any verbal denials on their part to offset." A right of the strikers to talk to the new men and persuade them not to go to work did not at that time exist. The new men were there presumably under contract and "certainly in search of work if not yet actually under pay." They were not at leisure, and their time could not lawfully be taken up by outsiders on the pretense of a right to argue or to persuade them to break contracts. Arguments were used at improper times. In Reinecke Coal Mining Company *v.* Wood[1] the effect of num-

[1] U. S. Circuit Court. 112 Fed. Rep. 477.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

bers is again considered, but this time in connection with other evidence of coercive purpose. "The intrusion of the defendants, so long as mere peaceful argument and persuasion were used, was in no way violative of the rights of the complainant; but when that persuasion took the form of the multitudinous camp and the gun and the pistol and the armed force, it passed the bounds of legal right." Yet again we read in the Union Pacific case: [1]

> The question of fact in the case is this: Have the methods to destroy the motive power of the company been by argument and persuasion and by peaceable methods? If so, the writ of injunction, under the law as evidenced by the authorities cited, should be denied. Or have the methods to destroy the motive power of the company been attended with assaults and violence and intimidation and terrorizing?

An interesting effort on the part of strikers to avoid violation of the letter of the law and at the same time accomplish their purposes is recorded in the Wabash Railroad case.[2] The committee of the strikers posted notices of which the following is a copy: "You are requested to stay away from the shop until the present difficulty is settled. Your compliance with this will command the protection of the Wabash employees. But in no case are you to consider this an intimidation." Other notices to various groups ended with the same sentence. On this the court comments: "The statement in all of these notices that they are not to be taken as intimidations go to show beyond a doubt that the writer knew he was violating the law, and by this subterfuge sought to escape its penalties."

(3) There is yet another source of dissatisfaction to those who feel that the use of the injunction is not properly restricted. It is taken to be the duty of the court to observe the distinctions between criminal and civil cases and between cases at law and cases in equity. To intrude the principles of equity into the proper sphere of the ordinary law creates dissatisfaction. At the same time to allow wrongs to be committed with im-

[1] Union Pacific Railway Company *v.* Reuf (cited above: 120 Fed. Rep. 102).

[2] U. S. Circuit Court. *In re* Wabash Railroad Company, 24 Fed. Rep. 217.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

punity because they are theoretically remediable by the ordinary law, when it is certain that no proper redress can be secured in that way, is to create both dissatisfaction and miscarriage of justice. Throughout all the cases there is a very general consistency on this point. The following citations will serve to make the position of the courts clear. In Arthur *v.* Oakes [1] we read:

> The authorities all agree that a court of equity should not hesitate to use this power [that of injunction] when the circumstances of the particular case in hand require it to be done in order to protect the rights of property against irreparable damages by wrongdoers. . . . That some of the acts enjoined would have been criminal, subjecting the wrongdoers to actions for damages or to criminal prosecution, does not, therefore, in itself determine the question as to interference by injunction. If the acts stopped at crime, or involved merely crime, or if the injury threatened could, if done, be adequately compensated in damages, equity would not interfere. But as the acts threatened involve irreparable injury to and destruction of property for all the purposes for which the property was adapted, as well as continuous acts of trespass, to say nothing of the rights of the public, the remedy at law would have been inadequate.

In Cœur d'Alene Mining Company *v.* Miners' Union [2] the court said:

> Equity will not interfere to prevent the commission of a crime. But when an attempt to injure constitutes acts or words which will operate to intimidate and prevent the customers of a party from dealing with him or laborers from working for him, the courts have, with nearly equal unanimity, interposed by injunction.

The same view is expressed in the following passages:

> Defendants insist that equity cannot properly interfere. But the inadequacy of a legal remedy in such a case as this one is quite apparent. . . . The attempt of the defendants, despite the objections of the company . . . was one of constant, daily, almost hourly occurrence. The case was one of continuing trespass, involving injury of

[1] U. S. Circuit Court of Appeals. 63 Fed. Rep. 310.

[2] U. S. Circuit Court. 51 Fed. Rep. 260.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

a permanent nature. A suit at law could only have determined the particular wrong occurring on a particular occasion, and would not reach other wrongs of a like character that would occur almost every hour of each day. . . . Only a court of equity was competent to meet such an unusual emergency, and by a comprehensive decree determine finally and once for all the entire controversy between the parties, thus avoiding a multiplicity of suits, and conserving the public interests. No remedy at law would be so complete or efficacious as a suit in equity in such a case as this one.[1]

What right have the complainants here in this court asking for the restraining power of the court? . . . It is quite plain that the relief in damages to be recovered in an action at law is entirely inadequate. It is quite absurd to say that they can sue each of these persons, and recover damages against them in separate suits, for every little act which, in the aggregate, tends to result in injury. . . . The injury is continuing and irreparable, and not capable of admeasurement according to legal principles. . . . So that at law the remedy is entirely inadequate. It is, therefore, a clear case for the interposition of a court of equity to exercise its preventive remedy, and that is the particular sphere at this day of a court of equity, as contradistinguished from a court of law. It prevents injury. It does not give damages for injuries already sustained, but it prevents an injury from being inflicted.[2]

Many courts of the highest character have held . . . that a suit in equity may be maintained to prevent the persons concerned in such a combination from carrying the same into effect, when the damages would be irreparable, or when such a proceeding is necessary to prevent a multiplicity of suits. . . . If the remedy at law is for any reason inadequate, resort may be had, as in other cases, to a court of equity.[3]

The decisions are not all on the one side, however, for some cases are brought to court where the facts do not so clearly demand equitable interposition. Among these may be cited, as illustrative, the following:

I am not inclined to grant the injunction *pendente lite* when the action can be tried and the rights of the parties more satisfactorily disposed of

[1] U. S. Supreme Court. Donovan *v.* Pennsylvania Company, 26 S. C. Rep. 91.

[2] N. J. Court of Chancery. Frank *v.* Herold, 52 Atlantic Rep. 152.

[3] U. S. Circuit Court of Appeals. Hopkins *v.* Oxley Stave Company (cited above: 83 Fed. Rep. 912).

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

at no very distant date. It is not the policy of the law to grant injunctive relief during the pendency of the action, where the relief would be the same as that ultimately granted if the plaintiffs succeeded at the trial, and the plaintiffs' right to the relief sought is involved in doubt.[1]

In Stone Cleaning Union *v.* Russell[2] the court refused the writ on the ground that, the contract having been violated by the employer, the employees had access to the court in suit for damages. "The court will not interfere by injunction in the case of a builder's breach of his agreement with a labor union to employ none but its members. . . . The labor union has an adequate remedy at law, and that remedy is the same as that of any employee wrongfully discharged."

(4) The final consideration which, in the view of the courts, determines the necessity for the writ of injunction is one that is more vague, more difficult to express in concise form. It may best be expressed, perhaps, as a desire to deal in the most effective way with difficulties which apparently baffle solution and to bring order out of chaos. One can hardly escape the conclusion that, after all, there lies behind all the argument and the logic a determination to continue the use of the injunctive writ, for the reason, primarily, that a situation exists that is dangerous to the community and that this situation is not likely to be met in any other way. In other words, so long as the disorder so frequently associated with strikes is not suppressed by other branches of the government, it must be dealt with by the courts. And as no other branch of the court can deal with the situation, the jurisdiction of the equity court has been extended to meet the necessity. References elsewhere made in this article indicate the basis upon which this conclusion rests. Destruction of property and property rights proceed unchecked, violence and disorder interfere with business rights, men seeking work are not able to take steps toward securing it because of the personal dangers encountered. The executive seems not to deal with the matter. All these are urged as underlying reasons for something being done that will be effective.

[1] N. Y. Supreme Court. Cohen *v.* United Garment Workers, 35 Misc. 749.

[2] N. Y. Supreme Court. 38 Misc. 513.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

In following this line of thought, it is best to begin with the cases in which the propriety of the interference of the courts is most hotly contested. The right to strike is no longer questioned by the courts. Unless the situation be complicated by some other circumstance, it is generally asserted that the employee may stop work at any time and for any reason or for no reason. Labor is a form of property which the laborer has for sale, and his power to dispose of this property to the best advantage is not disputed. So also a man's business is his property, and he is constitutionally protected in its enjoyment just as is the laborer in the enjoyment of his property, *i. e.*, his labor. It is in the conflict between these two competing factors that the court attempts to hold an even hand of justice. Clearly the two rights (they are in reality but two phases of the same right) are mutual, mutual in their extent and mutual in their limitations. In the competitive field each limits the other. These very obvious considerations the courts recognize, but in applying the general principle to particular cases as they arise difficulties are encountered. In Doremus *v.* Hennesy[1] the matter was dealt with entirely from the point of view of the rights and limitations of competition. "Full freedom in disposing of his labor or capital according to his own will as between himself and others" is the undoubted right of all. An invasion of that right "without lawful cause or justification" is legal wrong.

Lawful competition that may injure the business of another, even though successfully directed to driving that other out of business, is not actionable. Nor would competition of one set of men against another set of men, carried on for the purpose of gain, even to the extent of intending to drive from business that other set and actually accomplish that result, be actionable unless there was actual malice. Malice, as here used, does not merely mean an intent to harm, but means an intent to do a wrongful harm or injury. An intent to do a wrongful harm and injury is unlawful, and if a wrongful act is done to the detriment of the rights of another it is malicious, and an act maliciously done, with the intent and purpose of injuring another, is not lawful competition.

[1] Illinois Supreme Court. 52 Northwestern Rep. 924.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

In Frank *v.* Herold,[1] the rules of the common law regarding master and servant are invoked to determine the extent to which the relation of employer and employee is to be protected against interference by third parties.

> Any person who works for another for a salary is a servant in the eye of the law. Now the relation of master and servant being shown to exist, the law is quite clear that no person has the right to entice away another's servant, or to prevent him from performing his duties as servant. The right of a master to have his servant continue in his employment without molestation or enticement by any third party is a property right, so recognized by the law.

In this passage the New Jersey court ignores the extent to which the status of service has been superseded by the freer contractual relation of employment. If the old common-law rule here reasserted were enforced not only against picketing unions but also against competing employers, it would seriously limit competition for labor and correspondingly injure the laborer's market.

The general point of view here under consideration—the feeling of the courts that a social emergency is to be dealt with—finds expression in many judicial utterances already cited. A few more dicta of the same character are appended.

> A court of equity should not hesitate to use this power when the circumstances of the particular case in hand require it to be done in order to protect the rights of property against irreparable damages by wrongdoers.[2]
>
> If there be no redress for such wrongs, then the government is impotent indeed.[3]
>
> The inadequacy of a legal remedy in such a case as this one is quite apparent. . . . Only a court of equity was competent to meet such an unusual emergency.[4]

[1] Cited above: 52 Atlantic Rep. 152.

[2] Arthur *v.* Oakes (cited above: 63 Fed. Rep. 310).

[3] Beck *v.* Teamsters' Union (cited above: 77 Northwestern Rep. 13).

[4] Donovan *v.* Pennsylvania Company (cited above: 26 U. S. S. C. Rep. 91).

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

That the bill filed in this case alleged special facts calling for the exercise of all the powers of the court is not open to question. The picture drawn in it of the vast interests involved, not merely to the city of Chicago and the state of Illinois, but of all the states, and the general confusion into which the interstate commerce of the country was thrown, the forcible interference with that commerce, the attempted exercise by individuals of powers belonging only to the government, and the threatened continuance of such invasions of public rights, presented a condition of affairs which called for the fullest exercise of all the powers of the courts. If ever there was a special exigency, one which demanded that the court should do all that courts can do, it was disclosed by this bill, and we need not turn to the public history of the day, which only reaffirms with clearest emphasis all its allegations.[1]

Formerly courts of equity were extremely reluctant to interfere at all, even in regard to cases of repeated trespasses. But now there is not the slightest hesitation, if the acts done or threatened to be done to the property would be ruinous, irreparable, or would impair the just enjoyment of the property in future. If, indeed, courts of equity did not interfere in cases of this sort, there would, as has been truly said, be a great failure of justice in this country.[2]

In respect to acts which constitute a nuisance injurious to property, if

the injury is of so material a nature that it cannot be well or fully compensated by the recovery of damages, or is such as from its continuance and permanent mischief might occasion a constantly recurring grievance, a foundation is laid for the interference of the court by way of injunction. [The power to enjoin was formerly exercised sparingly and with caution,] but it is now fully established, and will be exercised as freely as in other cases in which the aid of the court is sought for the purpose of protecting legal rights from violation.[3]

Many other extracts of the same purport might be inserted, if it were necessary, to show the determination of the courts to take any action that is necessary to secure the ends of law and

[1] In re Debs (cited above: 158 U. S. 564).

[2] Arthur *v.* Oakes (cited above), quoting Story.

[3] *Ibid.*, quoting Kerr on Injunction.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

order. As the principle is stated, the only limit in its application seems to be the necessity of the case. What that necessity may be depends, of course, on the extent to which public opinion and the coördinate branches of the government allow the trouble to develop.

III

In a large number of injunction cases that come before the court in the form of contempt proceedings there is ever present the question: upon whom is the injunction binding? In this matter there has developed some difference of opinion, first, as to the persons against whom the writ runs, and second, as to the persons who are to be held responsible in case of its violation. In Conkey Company *v.* Russell,[1] charges were urged against one who had come to the town to direct the strike after the issue of the writ. He claimed that the writ was not against him as he was not there at the time of its issue. The court held, however, that he was guilty of contempt for combining with those enjoined by aiding them in violation of injunction, "with full knowledge of the scope and effect of the restraining order," and in that he did "aid, abet and assist them [the strikers] in acts of violence in violation of the injunction." "Jurisdiction existed by reason of the conspiracy to defeat the process of the court, and although such person is a stranger to the suit, and, by reason of his citizenship, could not have been made defendant therein." In Cumberland Glass Company *v.* Glass Blowers' Association,[2] the court granted the injunction sought, but only against those who were shown to have used force or coercion, refusing to enjoin the officers of the association as such. In Curphey and Mundy *v.* Terrell[3] an injunction was granted against certain persons, but not against all the members of the unions concerned nor against any one as a member of a union. The unions themselves were not made parties. In an effort to dissolve the injunction the court dealt with the case as one against individuals, not against unions.

[1] U. S. Circuit Court. 111 Fed. Rep. 417.

[2] Cited above: 46 Atlantic Rep. 208.

[3] Miss. Supreme Court. 39 Southern Rep. 477.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

The injunction was supported against those "shown by the record to have actually and violently committed a trespass . . . or who personally attempted to intimidate the non-union employees." Had the injunction issued against unions or charged conspiracy among the individuals, "an entirely different question would have been presented."

These statements are much less annoying to those who come into personal contact with injunctive processes than are such statements as the following:

The court must grant the writ in broad and unmistakable terms. . . . To do so will work no hardship, nor will it even hamper the action of any law-abiding person. Indeed, no one without a purpose to commit an unlawful act would be affected thereby.[1]

The restraining order does not deprive any one of any right nor require of him any wrong. It only requires that no wrong shall be committed, that no right shall be infringed. The order can do no harm, even if not clearly and absolutely justified, but I think the facts justify it, and as it was made, so it is continued.[2]

It is not necessary that one should be a party to the suit in which an injunction issues, in order to render him liable to punishment for a violation of it. Any person who, having notice that such an order has been made against a party to the suit, aids and assists that party in its violation, is as much amenable to proceedings for contempt as if he were a party named in the record. . . . To render a person amenable to an injunction, it is neither necessary that he should have been a party to the suit in which the injunction was issued, nor have been actually served with a copy of it, so long as he appears to have had actual notice.[3]

We are at a loss to perceive how the continuance of the injunction until final hearing can work any serious inconvenience, because [the persons enjoined] have all disclaimed participating in the acts charged against them; and, if they are restrained from doing that which they have not done and do not intend to do, they have no ground of complaint, at least during the pendency of the proceedings, and until the final hearing is reached.[4]

[1] Allis Chalmers Company *v.* Reliable Lodge (cited above: 111 Fed. Rep. 264.)

[2] U. S. Circuit Court. Gulf Bag Company *v.* Suttner, 124 Fed. Rep. 467.

[3] *Ex parte* Lennon, 166 U. S. 548.

[4] Md. Court of Appeals. My Maryland Lodge *v.* Adt, 59 Atlantic Rep. 721.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

In other cases the courts have taken a different attitude. In Pope Motor Car Company *v.* Keegan,[1] the complainants urged that the injunction ought to reach all of the defendants named in the bill; that all were out on strike and that, if they were law-abiding and not intent upon participating, they would not be harmed by the issuance of the injunction against them. To this the court replied:

I cannot escape the conclusion that, under the circumstances of this case, where the defendants are made such in their individual capacity and not in any organized capacity, it would be a gross injustice to attach to persons who have not been shown to be participants in these transactions the stigma of an injunction, or to make them . . . subject to the payment of any costs which necessarily accrue in such a case.

In the Union Pacific case[2] the contention was that the writ should cover persons presumably innocent for the reason that "the writ of injunction can do no harm to a law-abiding man, even though not warranted by the evidence." To this the court replied, "I do not so believe," and stated two reasons, first, "I should not be mulcted in the costs," second,

I should not be humiliated by having an injunction run against me, when there is no evidence that I have done, or, so far as evidence shows, am not likely to do, any of the things complained of, and am not acquiescing, by silence or otherwise, in what my colaborers, or men in a class to which I belong, are doing.

But lest this statement should seem to remove too fully the restraint from those not named in the writ, the court added, after refusing to include by name any persons against whom there was no evidence,

yet the writ will include, in effect, all those who quit the company's service, and are engaged in the strike, with the purpose of compelling the company to reëmploy them by attempting to impair the motive power of the company or otherwise cripple its service. In other

[1] U. S. Circuit Court. 150 Fed. Rep. 148.

[2] Union Pacific Railway Company *v.* Reuf (cited above: 120 Fed. Rep. 102).

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

words, the class of men will be controlled by the injunction, and the class of men above alluded to will not violate the injunction, except at their peril.

It is often claimed by those enjoined that the injunctive order is not sufficiently specific as regards the particular acts that are enjoined. This, of course, creates a feeling of uncertainty on the part of those concerned in a strike. The Jordahl case[1] illustrates this point. The defendants complained that the injunction was "indefinite and uncertain," and that it was "impossible to ascertain therefrom what acts defendants are enjoined from performing." To this the court replied:

The court was not called upon, nor was it practicable, to enumerate the particular acts which in its opinion would be regarded as acts of intimidation. . . . Defendants are presumed to be intelligent and law-abiding citizens, and, as such citizens, the court was content to leave to them the determination of what particular acts they could in future safely resort to without violation of its directions. The meaning of the injunction is plain enough, and so long as the defendants keep within the intention expressed by the court they will be within their rights so far as any violation of this judgment is involved.

IV

The question of precedent has often been raised, especially by counsel for defendants. It is frequently urged that the courts have never before used the power of injunction in the particular way proposed, or even that the general policy of enjoining strikers is one that cannot be justified from the precedents of the court, *etc.* Such an argument finds a ready answer in the decisions. In Toledo *etc.* Railway Company *v.* Pennsylvania Company[2] the court said:

Every just order or rule known to equity courts was born of some emergency to meet some new conditions, and was, therefore, in its time, without a precedent. If based on sound principles, and beneficent results follow their enforcement, affording necessary relief to the

[1] Jordahl *v.* Hayda (cited above: 82 Pacific Rep. 1079).

[2] U. S. Circuit Court. 54 Fed. Rep. 730.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

one party without imposing illegal burdens on the other, new remedies and not unprecedented orders are not unwelcome aids to the chancellor to meet the constantly varying demands for equitable relief. [Quoting from another case.] "I believe most thoroughly that the powers of a court of equity are as vast, and its processes and procedure as elastic, as all the changing emergencies of increasingly complex business relations and the protection of rights can demand." [Quoting again.] "It is one of the most useful functions of a court of equity that its methods of procedure are capable of being made such as to accommodate themselves to the development of the interests of the public in the progress of trade and traffic by new methods of intercourse and transportation."

The same position is taken in Otis Steel Company *v.* Local Union;[1] and this case is of particular interest as showing more fully the court's attitude toward some of the methods adopted by strikers to carry their point. In this case the counsel for the defense reviewed the history of the writ of injunction in order to emphasize the extreme care which the courts had always exercised in its issue. Commenting on this line of argument, the court said:

It is peculiarly appropriate, in the analysis of these strike cases, to consider the great power which the jurisdiction to issue this writ confers, and the strict boundaries which should confine its use, because the beginning of all the trouble was the attempt of the Iron Moulders' Union, No. 218, without the assistance of a court, to enjoin the complainant from operating its plant. That injunction was attempted to be enforced, not only against the complainant, but against all non-union moulders; and its terms, as addressed to the complainant, were, in substance, "You must not proceed with your business and the operation of your plant unless you comply with the conditions which we have imposed"; and as to the non-union moulders, "You shall not work for the Otis Steel Company." It would not be claimed for a moment that there has ever existed any authority in the defendant to so issue its edicts against either the complainant or the non-union moulders. The assumed right thus to dictate to others may be referred to an unfounded notion on the part of this moulders' union that it and its members are the exponents of some higher law than that which may

[1] U. S. Circuit Court. 110 Fed. Rep. 698.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

be administered by courts. It would not be urged for a moment that this moulders' union, or its members, could have rightfully obtained from any court the injunction against the Otis Steel Company and the non-union moulders, which, in the course of this strike, has been attempted to be enforced. If, from the history of the writ of injunction, it can be gathered that courts should exercise great care in its use, it follows with more force that a self-constituted body of men, deriving no authority from recognized law, should not be permitted to originate edicts for the government of others and attempt to enforce them by any means whatsoever.

It is because of the varying circumstances of the cases

that courts of equity constantly decline to lay down any rule which shall limit their power and discretion as to the particular cases in which such injunction shall be granted or withheld. . . . And there is wisdom in this course, for it is impossible to foresee all the exigencies of society which may require their aid and assistance to protect rights or redress wrongs. The jurisdiction of these courts, thus operating by special injunction, is manifestly indispensable for the purposes of social justice in a great variety of cases, and therefore should be fostered and upheld by a steady confidence.[1]

Seldom does it occur that the language of decisions is other than the temperate, passionless expression of logical reasoning. It is certainly of decided advantage to the interests of stability in our judicial system that such is the case. Unfortunately it can not be said that this mode of expression is the absolute rule. While the exceptions are exceedingly rare, yet it is often the exception that finds its widest circulation in the labor and socialistic literature. This has a very unfortunate result; it adds greatly to the distrust with which these social groups already regard the courts. Two extracts will illustrate the kind of writing referred to.

I do not recognize the right of laborers to conspire together to compel employees who are not dissatisfied . . . to lay down their picks and shovels and to quit their work, without a just or proper reason therefor, merely to gratify a professional set of "agitators, organizers and

[1] Arthur *v.* Oakes (cited above: 63 Fed. Rep., 310), quoting Story.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

walking delegates," who roam all over the country as agents for some combination, who are vampires that live and fatten on the honest labor of the coal miners of the country, and who are busybodies creating dissatisfaction amongst a class of people who are quiet, well-disposed, and who do not want to be disturbed by the unceasing agitation of this class of people.[1]

When . . . the attempt is made, through intimidation and acts of violence, to effect this end [to keep others from work], it is tyranny of the most despotic character; it is civil war; it is treason to the principles of this and almost every other government. It will not be tolerated.[2]

V

It thus appears that the courts have very decided opinions, not only as to the unquestioned constitutionality of the injunction, but also as to its usefulness. It does not follow, however, that either constitutionality or usefulness justifies altogether the methods followed in its use.

One who reads a large number of the decisions can hardly fail to obtain the impression that the courts are coming to grant injunctions with increasing willingness. It seems as if the benefit of the doubt were coming more and more to be given to the complainant in his request for the issuance of the writ. Precedents are so numerous that the courts are now omitting to cite them, passing on with the simple recognition of the fact that the right of equity is now fully established. One case of great necessity so easily becomes a precedent for another, the necessity of which is not quite so evident, that almost unconsciously the courts seem to have come to the point of now granting writs where at first the need for them would have been denied. If this is so, and the cases seem to indicate that it is so, it may well become still more easy in the future to secure injunctions against strikers. The growing frequency with which employers who find themselves confronted with a strike appeal to the courts for a writ is further evidence of the tendency to grant injunctions readily. The process by which a writ is secured

[1] U. S. Circuit Court. United States *ex rel.* Guaranty Trust Company *v.* Haggerty, 116 Fed. Rep. 510.

[2] Allis Chalmers Company *v.* Reliable Lodge (cited above: 111 Fed. Rep. 264).

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

seems to be very easy. The court is appealed to, perhaps, as in one case, in chambers "late on Saturday night." The situation set forth (by interested counsel) discloses, in the words of the judge, "an emergency in which prompt action was necessary"; and the judge adds: "I had granted a similar mandatory order, in 1891, on a bill for an injunction, and it was enforced with beneficial results." He concludes that the bill "clearly entitles the complainant to relief."[1] So far, it must be admitted, the proceedings are very one-sided.

Then the time comes when the temporary injunction is to be made permanent. Here it seems to the one against whom the writ has been issued very much as if the court had shifted the burden of proof. It is not for the complainant to show cause why the injunction should be made permanent. The burden of proof lies with the defendant, and it rests with him to show why the writ should not be made permanent. To the defendant it seems as if guilt were assumed until innocence is established. Here again may be noted the difference between the popular view of the labor leaders and the legal view of the court, based on the distinction between criminal and equity processes. The court would hold that (in theory) the temporary injunction is not issued until a *prima facie* case of anticipated damage is made out. Then, according to the rules of procedure, the plaintiff having made out a *prima facie* case, the burden of proof shifts. Whether or not the *prima facie* case is actually established before the temporary writ is issued rests of course with the integrity and fairmindedness of the judge. It is important, however, to keep to the necessary distinction between what is done in accordance with the underlying theory and what may be done because of the bias of an individual judge.

A further point is of importance in connection with the effort to make permanent a temporary writ. The writ has been issued. To recall it would, in a sense, be an acknowledgment that its issue was an error. This consideration has the more

[1] Toledo, *etc.* Railroad Company *v.* Pennsylvania Company (cited above: 54 Fed. Rep. 730).

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

force when it is recalled that the second hearing takes place before the judge who issued the first restraining order.

In this second step of the proceedings the defendants find themselves confronted with a bill of charges, couched in a formidable array of words, accusing them of a startling series of crimes. Here again it seems to them as if their case had been prejudged. The situation is aggravated by the fact that the counsel for the complainant so often writes the restraining order which the court issues. "The order [of injunction] was drawn by plaintiff's attorney, as is usual in such cases." [1]

Though these facts may convince one that the power to issue the writ is occasionally abused, yet it is to be hoped that the use of the injunction in labor disputes will never be abolished. Its usefulness is too evident. It is too firmly grounded in the common law. It is earnestly to be hoped that the abuses will be speedily ended. Some of these abuses have already been made clearly apparent. These should be dealt with without delay. Interested counsel should not be permitted to draft the writ. Hearing for permanency should not be before the judge who granted the temporary writ. A distinction should probably be made between contempt in the presence of the court and contempt not in the court's presence.

The final test to be applied to any proposed modification is, however, the test of efficiency. The preventive efficiency of the writ of injunction must not be lessened. If a change would result in decreasing the preventive efficiency of the procedure, it should not be made, even if it be clear that some other minor injustice would thereby be removed.

The moral remedy lies in another direction. The conditions that give rise to the evil must be dealt with. Here it is that the entire matter lies squarely in the hands of the strikers, and further, since the strikers are almost uniformly organized laborers, it lies with the unions themselves. They must do one or both of two things. They must organize in a corporate form, so that the organization will have a legal stand-

[1] Minn. Supreme Court. Gray *v.* Building Trades' Council, 97 Northwestern Rep. 663.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

ing. This will do away with a large part of the objection that the strikers can be dealt with in no other way than through the injunction. They must organize and conduct strikes in a manner free from the lawlessness which sooner or latter appears with nearly every important strike. If the lawlessness is on the part of the members, the unions must discipline the members. If it is on the part of their sympathizers or of the "lawless mob," they must manifest a greater agility in bringing such elements to justice. It is safe to conclude that until these things are done, "public opinion"—the backbone of support of every strike—will range itself on the side of law and order, and on the side of a use of the injunction, if that be necessary, in the interests of law and order.

How intimately the real interests of the laborers are wrapped up in the orderly conduct of their affairs the courts themselves realize as fully as any one. To emphasize this point, let one case speak for many:

> No class of men stands more in need of the protection of the law and its safeguards than do laboring men, nor to any class is public sympathy and the support of public opinion more desirable, and to no class will both these be more cordially extended so long as these organizations keep themselves within the limits of law and order. Whenever they exceed such limits, they greatly weaken themselves and the cause they represent, for an overwhelming majority of the American people are so thoroughly in favor of the maintenance and supremacy of law that they will defeat any attempt to pervert it or overthrow it.[1]

GEORGE GORHAM GROAT.

OHIO WESLEYAN UNIVERSITY.

[1] Consolidated Steel and Wire Company *v.* Murray (cited above: 80 Fed. Rep. 811).

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

THE NEEDS OF THE RAILROADS

THAT the railroad companies may fulfil their duties to the nation, it is essential not only that their tariffs do not impede commerce but that the work of transportation be adequately performed. This includes the provision and maintenance of sufficient facilities—tracks, locomotives, cars, buildings and structures—and of a properly organized and disciplined force of employees. It includes also, if the performance is to be continuously adequate, an extension of the facilities of the railroads as the volume of traffic increases. Inasmuch as the railroads of this country were constructed by capital subscribed by bondholders and stockholders, and as their extension must be provided for mainly by subscriptions of further capital to stock or to bonds, it is obvious that the profits from operation must be sufficient to attract capital in competition with other opportunities for investment.

Seventy or eighty years ago, the first and foremost need of the country was for means of communication and transportation, and capital was subscribed simply that railroads might be built, profit from their operation being usually a future and secondary consideration. Traffic in general was undeveloped, and there was no criterion by which the success of a projected railroad could be gauged. The probable volume of traffic, amount of earnings and expense of operation could only be guessed at. Subscriptions were frequently made directly to thepromoters.

Nowadays, as a rule, before capital in considerable amounts is subscribed either to build a new or to extend an existing railroad, a proposed issue of bonds or stock is scrutinized by one or more of the great banking houses. The consent of a banking house to negotiate the issue does not indeed guarantee either the integrity of the investment or the continuance of return upon the investment, but such negotiation gives the issue a prestige proportionate to the confidence which the banking house enjoys among its clients and depositors and the public in

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

general. The examination on behalf of the banking house is made by experts, who consider, in case of an existing property, its physical condition, traffic and administration and, in the case of a new railroad, the traffic which will probably come to it and the ability of its projectors. A somewhat similar scrutiny of the record of the railroads of the United States as a whole will afford basis for conclusions as to what they need in the way of extensions and of increased facilities, and in the way of capital with which to provide for such betterments.

The principal factors through which the record of a railroad is brought to test are:

(1) *The gross earnings*, which depend upon the rates and the volume of traffic. Traffic is measured by ton miles, the unit being one ton of freight carried one mile, and by passenger miles, the unit being one passenger carried one mile. The sum of ton miles and passenger miles may, for the purposes of this article, be considered as the number of traffic units, although the two units differ in many respects.

(2) *The operating expenses*, which depend upon the facilities for operation and the efficiency of the methods of operation, modified however by the volume of traffic and the peculiar requirements of particular traffic. Facilities are measured by miles of line, miles of track, number and tractive power of locomotives, number and capacity of freight cars, number of passenger cars and number of employees of the various grades. Efficiency of operation is measured, other things being equal, by the ratio between the units of operation and the units of traffic, and also, other things being equal, by the ratio between the gross earnings and the expense of operation. Units of operation are freight-train miles and passenger-train miles. The greater the ratio of tons to freight-train miles and the greater the ratio of passengers to passenger-train miles, the greater is the efficiency of operation. The lower the ratio of operating expense to gross earnings, the greater is the efficiency of operation.

(3) *The net earnings*, which are what is left of the gross earnings after the operating expenses and taxes have been paid. This remainder, plus the income from sources other than opera-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

tion, constitutes the fund from which interest on funded debt and dividends are payable, and from which contribution is made to the surplus.

(4) *The capitalization*, the amount upon which the bondholders and stockholders expect return.

The relation borne by these various factors one to another in the progressive performance of the railroads of this country is shown by the following tables of percentages. As publication of collected statistics of the railroads of this country did not begin until a number of years after the close of the Civil War, and as the comprehensive presentations of the present day were attained only by gradual development, no one of these tables is based on information for any part of the period prior to 1871, and for many of the headings information is obtainable only for more recent years. Information for the years prior to 1889 has been compiled from Poor's *Manual;* for 1889 and subsequent years, from the statistics of the Interstate Commerce Commission.

During the decade from 1875 to 1885 the comparative increases in the different phases of railroad activity were as follows:

FACILITIES	INCREASE (PER CENT)
Miles of line	72.38
Locomotives	67.09
Freight cars	113.85
Passenger cars	23.32
FINANCE	
Capitalization	77.61
Gross earnings	53.57
Net earnings	45.27
Operating expenses	58.42
Interest and dividends	57.93

This decade of rapid extension of the railroads immediately followed the uniting of small roads serving a local traffic into through lines. These through lines were extended in advance of traffic, and new railroads were built into undeveloped regions. With the extension of the through lines was inaugurated the competition for long-distance traffic. Rate wars and rebates were at their height during the early years of the decade.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Then, owing to the steadying effect of the traffic associations, dividends increased until the volume of traffic fell with the minor depression of 1884. Of the increase in capitalization about two-thirds is accounted for by the cash value of new line and new equipment, leaving about one-third, or about $1,200,000,000, to be accounted for by buildings and other structures, franchises and other assets, and the natural increase in the value of the properties in general, with whatever there may have been of "water."

The ratios of increase from 1885 to 1895 are as follows:

FACILITIES	INCREASE (PER CENT)
Miles of line	41.45
Miles of track	47.51
Locomotives	38.46
Freight cars	47.34
Passenger cars	91.51
TRAFFIC	
Ton miles	73.39
Passenger miles	33.44
Traffic units	66.00
FINANCES	
Capitalization	21.34
Gross earnings	39.19
Net earnings	29.74
Operating expenses	44.25
Interest and dividends	27.42

That during this decade there was more of intensive than of extensive growth is shown by the fact that the percentage of new line was little more than half as great as during the previous decade and was six per cent less than the ratio of increase of miles of track. Miles of line, miles of track, supply of locomotives and freight cars all increased in practically double the ratio of the increase of capitalization. It was toward the close of this decade that new and powerful locomotives and new and enlarged freight cars came into service, the increase in power per locomotive and capacity per freight car making the actual increase in equipment far greater than that indicated by the increase in numbers. There was a marked increase in the number

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

of passenger cars. The cost of additional track and equipment acquired during this decade exceeded the increase in capitalization, a fact which indicates that the cost was met in great measure from the earnings. The low ratio of increase indicates a hardening-down of capitalization, caused by this placing of earnings back into the properties and also by the scaling-down through receiverships and reorganizations following the panic of 1893. The earnings for the decade as a whole did not gain in proportion to the increase in facilities. The last year of the decade, however, was one of severe industrial depression, gross and net earnings each falling about twelve per cent below the amounts for 1893.

The ratios of increase from 1895 to 1905 are as follows:

FACILITIES	INCREASE (PER CENT)
Miles of line	20.72
Miles of track	29.29
Locomotives	35.46
Freight cars	44.76
Passenger cars	22.96
TRAFFIC	
Ton miles	118.78
Passenger miles	95.26
Traffic units	115.84
FINANCE	
Capitalization	17.34
Gross earnings	93.65
Net earnings	98.45
Operating expenses	91.62
Interest and dividends	62.40

This decade also exhibits a greater proportion of intensive than of extensive growth, miles of track, supply of locomotives and freight cars all increasing in far greater ratio than miles of line. The extraordinary increase in the number of passenger cars during the preceding decade explains the low ratio of increase in this decade. The cost of the additions to facilities again exceeds the increase in capitalization. Indeed, the proportion of the earnings of the American railroads that was being turned back into the properties excited apprehension in foreign coun-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

tries, and the English investors sent over an expert to examine into this disposition of the earnings and to ascertain if there were justification for it. He reported that the maintenance of the railroads and their development to meet the extraordinary increase of traffic that began with 1898 made imperative the expenditure of vast sums upon improvements and extensions. At this time the surplus capital of the country was pouring into industrial combinations, which were being formed upon a scale hitherto undreamed of. The expenditures for improvements made by the railroads out of their earnings tended still further to solidify the capitalization. This naturally elicited complaints from the stockholders, whose dividends were not augmented to an extent at all corresponding with the increases in traffic or in earnings.

The pressure for lower rates, the steady increase in taxes of all kinds, the rapidly increasing wages and the mounting prices for all material used by the railroads forced great economies in methods of operation. These were made possible largely by the powerful locomotives and the capacious freight cars. The traffic units carried per dollar of capitalization, which had increased 38 per cent from 1885 to 1895, increased 91 per cent from 1895 to 1905. The number of traffic units carried per mile of track increased 13 per cent from 1885 to 1895 and 66 per cent from 1895 to 1905. The number of traffic units carried per locomotive increased 21 per cent from 1885 to 1895 and 59 per cent from 1895 to 1905. The number of traffic units carried per employee increased 22.59 per cent from 1895 to 1905. This greater performance per unit of plant is also reflected in the ratio of the capitalization to the earnings. In 1885 it took $10.15 of capitalization to produce one dollar of gross earnings; in 1895, $8.84; in 1905, but $5.36. The capitalization per unit of traffic was 13.4 cents in 1885, 9.7 cents in 1895 and but 5.3 cents in 1905. This result was attained notwithstanding that the average rate per ton per mile in twenty years had decreased 27.5 per cent.

The progressive efficiency of the American railroads, the progressive increase, both relative and absolute, in their contribution to the activity of the nation are shown by the fact that

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

the rate of increase in traffic carried was persistently greater than the rate of increase in capitalization or in earnings, notwithstanding the decreasing charge for transportation. These results are summarized in the following tabulation:

	1875 to 1885	1885 to 1895	1895 to 1905
Traffic units: increase (per cent)	——	66.00	115.84
Capitalization: increase (per cent)	77.61	21.34	17.34
Gross earnings: increase (per cent)	53.57	39.19	93.65
Net earnings: increase (per cent)	45.27	29.74	98.45
Return to capital: increase (per cent)	——	27.42	62.40
Rate per ton per mile: decrease (per cent).	——	20.00	8.70

In the vociferous discussion of the past few years so much has been said about the "fictitious" capitalization, the "over" capitalization, the "wind and water" in the capitalization of the railroads of the United States, that the statement that the capitalization per mile has been gradually diminishing will doubtless be received with incredulity. Yet that is the exact truth, as shown by the statistics published by the Interstate Commerce Commission. In connection with the tables of capitalization published in its annual volume of statistics, the commission states that, in so far as the given amount of capitalization includes bonds or stocks of railroads which are owned by other railroads, the total represents a duplication.[1] For example, the Northwestern Ohio Railway Company and the Pittsburg, Fort Wayne and Chicago Railway Company have each issued stock, which, however, is owned principally by the Pennsylvania Company. The Pennsylvania Company has issued stock which is in large measure supported by these underlying issues of the Northwestern Ohio Railway Company and the Pittsburg, Fort Wayne and Chicago Railway Company. All the stock of the Pennsylvania Company is in turn owned by the Pennsylvania Railroad Company. It is therefore manifestly a duplication to include the stock issues of the subsidiary companies as well as the total stock issue of the Pennsylvania Railroad Company. For another example, a majority of the

[1] *Cf.* Statistics of Railways in the United States for 1905, p. 55.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

stock of the Mobile and Ohio Railroad Company is owned by the Southern Railway Company and is therefore covered by the stock of the latter company. It is therefore a duplication to list the entire stock of the Mobile and Ohio as well as the entire stock of the Southern in a table giving the capitalization of the American railroads. This, however, notwithstanding its statement just referred to, is what the commission does, making the average capitalization $65,926 per mile for 1905. If from the total capitalization as given in the tables of the commission we deduct the amounts of duplicated capitalization, as given in the statistics of the commission, the average capitalization per mile for 1905 is found to be $51,201 instead of over $65,000. The average capitalization per mile for 1895 was $52,676; for 1885, $61,400; for 1875, $59,593. In 1875 there was very little ownership of the issues of one railroad company by another and in 1885 the proportion was still small. This period of promotion and rapid extension doubtless knew more or less of watered capitalization, that is, if the capitalization be considered at par. It was the custom, however, to issue large amounts of stock as a bonus to induce investors to place their money in bonds, and these issues of stock, dependent upon future development for whatever value they might have, sold far below par. The receiverships and reorganizations following 1893 reduced the average capitalization per mile to $52,676 in 1895. In the following decade the development of the "community of interest" led to very large purchases by this company and that company of the stock and bonds of other companies, and one effect was that the average capitalization per mile in 1905 was but $51,201 at par. This low average is also in part accounted for by the extensions made out of earnings. In 1890, for every $295 of gross earnings, one dollar was spent for permanent improvements; in 1895, the ratio was one dollar for improvements to every $320 of gross earnings; in 1900, one dollar for every $66; in 1905, one dollar for every $63; and in 1906 one dollar for every $49.

The relative decrease in capitalization, together with the tremendous increase in facilities and in improvements in operation, accounts for the fact that the ratio of the value of plant to

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

a given amount of traffic decreased 28 per cent from 1885 to 1895 and 45 per cent from 1895 to 1905. In view of these facts it seems impossible that there can at this time be any substantial amount of water in the capitalization of the railroads of the United States. Such over-capitalization as still exists is sporadic; and where water is still to be found it is being forced out by the receiverships and reorganizations that occur from time to time, just as the healthy body forces deleterious elements in the blood to the surface and then ejects them from the system.

For the decade ending in 1905 the railroads carried 115.84 per cent more traffic for 93.65 per cent more money, the volume of traffic therefore increasing 22.19 per cent more rapidly than the compensation for carrying it. The employees, dealers in supplies and others concerned in the operation received 91.62 per cent more compensation, while capital received but 62.4 per cent greater return. For the year 1907 the disposition by the New York Central Railroad of its income, dollar by dollar, was as follows: for salaries and wages, 38.2 cents; to dealers for supplies, *etc.*, 30.8 cents; for interest and rentals, 17.8 cents; for taxes, 3.1 cents; for dividend, 9.7 cents; for surplus, 4 cents.

The facts brought to light by this scrutiny—that the railroads have moved a greatly increased traffic at lower rates, that they have vastly increased their facilities with a relatively decreasing capitalization, and yet that their expenses for operation have increased about fifty per cent faster than the returns on their capital—demonstrate a progressive economy of administration from which their employees and the public have derived a far greater proportion of benefit than the bondholders and stockholders.

Another question of foremost importance is: what has been the effect of this economy upon the railroads? Although the record of their performance as disclosed by these statistics is that of constantly increasing achievement, every one knows that during the period from 1898 to 1907, the railroads of this country had to face increasing criticism and execration and a seemingly universal hostility. Shippers were not supplied with

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

as many cars as they desired nor as promptly as they desired them, shipments were subjected to long delays in transit, and there was one disastrous wreck after another. The popular antagonism found vent in laws enacted by congress and by many of the state legislatures—laws that increasingly impeded the operation of the already overburdened railroads. There were few to believe that the officers of the railroads, the men who in reality were accomplishing the magnificent results placed in evidence in this article, were doing the best that they could do. There were few to believe even their simple statement that, if anyone would show them how to produce better results under the limitations that bound them, they would be only too willing to avail themselves of suggestions.

The truth, however, is that the railroads, which had suffered severely from the depression following the panic of 1893, did not anticipate and were not prepared for the tremendous traffic that sprang from the renewal of business activity in 1898. Although new equipment was ordered and facilities were extended, the extraordinary volume of traffic was regarded by them, as by business men in general, as a transient rush of prosperity after the dam of depression had been broken down, and it was generally believed that the force of the movement would soon be spent. The mounting earnings permitted increased distribution among stockholders, many of whom had received for years little or nothing in the way of dividends, although they had seen surplus earnings put back into the railroads. The phenomenal increase of traffic each year was however exceeded by a yet more phenomenal increase the next year. Car and locomotive factories and rail mills became overcrowded with orders, and railroad employees, from general managers down to section men, were struggling with an ever-rising tide of traffic that threatened to overwhelm them. The results of their struggle have been indicated. But even a railroad man must be a blind partisan not to admit that, in the half-decade from 1900 to 1905, the railroads of the United States were unequal to the demand, or to deny that at times they weakened seriously under the strain. The figures tell the story. In ten years the traffic increased 115 per cent. This

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

was double or more than double the increase in facilities and about seven times the increase in capitalization. Had it not been for the panic of 1893 the ton miles for the decade ending 1895 would have increased at least 100 per cent. They did increase 73.39 per cent, and for the decade ending 1905 they increased 118.78 per cent. Speaking broadly, the freight traffic of this country increases about 100 per cent every ten years, and there is every likelihood that it will increase 100 per cent or more in the next ten years, a period of depression being more than made up by a return of prosperity.

Twenty years ago the traffic units were eighty billion a year, and preparation for a one-hundred-percent increase meant provision for an additional eighty billions. Now the traffic units are over two hundred and fifty billions a year, and preparation for a one-hundred-percent increase means preparation for an additional two hundred and fifty billions. It is not likely that it will be possible during the next ten years to reduce the ratio of the value of plant to unit of traffic in any such proportion as during the last ten years. Freight cars cannot be built any higher, without a change in the standard of overhead clearances throughout the country. They cannot be made any wider, for they will not pass on a double track. They cannot be made any longer, for they are now standardized in length to fit the loading and unloading facilities at elevators, warehouses, ore docks and so forth. Likewise the power of the locomotives cannot be increased except through intensive improvement. Therefore provision for a one-hundred-percent increase in traffic will more nearly approximate a one-hundred percent increase in facilities than heretofore. There must be extensive purchases of real estate for enlargement of yards and terminals.

If provision for a one-hundred-percent increase of traffic meant an increase of one hundred per cent in facilities, the existing railroad plant of the United States would have to be doubled. Let us assume, however, that the traffic increased by one hundred per cent can be handled with facilities increased by eighty per cent. Taking the cost of main-line track at $30,000 per mile, other track at $15,000 per mile, locomotives

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

at $15,000 each, freight cars at $1000 each and passenger cars at $5000 each, it will be found that an eighty-percent increase in the track and equipment of 1905 would cost over eight and one half billions of dollars. The requisite real estate would probably cost another half billion of dollars, bringing the total expenditure necessary to provide for the traffic of the decade ending with 1915 to an average annual investment of nine hundred millions of dollars.

If this expenditure is made on capital account, the capitalization of the railroads of the United States will have to be increased to over twenty billion dollars. In 1885 the total return to the capitalization of the railroads was but 3.38 per cent, in 1895 but 3.55 per cent. In 1905, on the capitalization as given by the Interstate Commerce Commission, the return was 4.4 per cent; on the net capitalization as given in this article it was 4.9 per cent. For this year, moreover, 62.84 per cent of the total railway stock paid no dividends at all, and the average rate of dividends that were paid was less than six per cent. Of the total funded debt 78 per cent reaped a return which averaged less than six per cent. The entire surplus of all of the railroads of the United States was less than one-tenth of the annual expenditure that will be needed to keep them abreast of the traffic.

As shown by government reports, summarized by the writer in another article,[1] the net return to the capital invested in manufactures averaged 15.1 per cent for the year 1905, the net return to the capital invested in agriculture 9.8 per cent for that year. Into these two branches of our national industry, particularly into the manufacturing and the allied mining industry, capital was unhesitatingly poured. When, however, the overburdened condition of the railroads as a whole had become apparent to every one and they entered the market with propositions for hundreds of millions of dollars of new capital, the nation stood aghast at their temerity. When even the clogged and congested Pennsylvania Railroad sought to parallel its facilities between Pittsburg and New York, voices were not lacking to criticise what was called its rashness. The truth is

[1] Logan G. McPherson, "The Farmer, the Manufacturer and the Railroad." *North American Review*, November, 1907.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

that the railroads did not begin to ask for new capital soon enough nor in amounts large enough. Had their requisitions begun with the resumption of business activity in 1898 and 1899, fewer mills and skyscrapers might, perhaps, have been built in the next half-dozen years, but the facilities of the railroads might have been kept well ahead of the demand. When they did ask, what did they receive? Bond issues even of stable companies could be sold only at a discount and in many cases only at a heavy discount. When the necessity for radical and unprecedented increase in the facilities of the railroads became imperative, rail mills and car and locomotive factories in their turn were overwhelmed with orders, many of which they could not fill for a year or even for two years.

If during the great prosperity that marked the year 1905 the railroads were able to earn less than five per cent, what must be the result with expenses increased—as they have increased since that time—and with a diminished traffic? It is a condition and not a theory that confronts the railroads. They must make ends meet, and they must provide for the future. Not only must they make returns on the capital in the existing plant, but they must demonstrate the possibility of making returns that will enlist capital in the doubling of that plant. This must be done, not merely that the investment of capital may be profitable, but that the transportation needs of the country may be met.

To whatever extent the waterways may be developed, they cannot supplant the railroads upon which the greater portion of the burden of transportation now falls and of necessity will continue to fall. In substantiation of this statement it is necessary only to remind the reader that, particularly in the busier Northern states, canals and rivers are frozen over throughout a considerable portion of the year. It is necessary only to look at the network of railroad lines on the map of any of the states and to consider what would have to be done before waterways could even fractionally take their place. Holland would no longer be the typical land of dikes and ditches. How could canals supplant the service now rendered to mills and warehouses into which the tracks of the railroads penetrate?

If the expenditure of the railroads cannot be lowered, their

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

revenue must perforce be increased. Revenue may be increased through an augmentation of the volume of traffic or through an advance in rates. If during the prosperous year 1905 and at the rates then prevailing the railroads could not pay five per cent on their capitalization and could not obtain new capital except at heavy discount, what are they to do when confronted with the necessity for additional capital in vast amounts?

Compared with the average of the decade from 1890 to 1899, the average wages for 1905 were 14 per cent higher and the average hours of labor per week 4.1 per cent lower. Food advanced an average of 12.4 per cent and all commodities an average of 15.9 per cent. The average rate per ton mile of the railroads decreased 8.8 per cent. The men who ship the larger portion of the freight say, almost without exception, that railroad rates are low. The docket of the Interstate Commerce Commission since the enactment of the Hepburn law shows few complaints of importance, and more of these have been decided in favor of the railroads than in favor of the complainants. The rates of freight do not affect the retail prices of the great staple commodities of daily and general use. If the railroads of the country find it necessary to advance their rates, in order to obtain the capital requisite to equip them to move the traffic of the country, there should be no objection from any one.

There are many freight rates that cannot be increased without impeding, or, perhaps, in some cases, stopping, a flow of traffic. There are many freight rates that can be advanced a fraction of a mill or even a fraction of a cent a mile without burden to the producer or the consumer, but with an immediate benefit to the railroad companies that will, in turn, inure to the benefit of every producer and every consumer in the United States. Not only is adequate transportation necessary to the material welfare of every producer and every consumer, but of many kinds of merchandise the railroad companies are the largest purchasers in the country. When the railroads are prosperous, the good effects ramify throughout industry in general. When they are crippled, allied industries are crippled, and the baneful effects are transmitted along every nerve fiber of the industrial organism.

LOGAN G. MCPHERSON.

NEW YORK CITY.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

THE CRISIS AND PANIC OF 1907

IN this article it is my purpose, not to narrate the interesting events of 1907, but to state briefly what seem to be the causes and conditions which made those events practically inevitable, and to consider what may be done to make such events less liable to occur in the future.

As there is some confusion in the popular use of the terms crisis and panic, it seems best to state clearly the sense in which they are used in this paper. A crisis is the culmination or turning-point of a period of prosperity, and is always followed by a period of liquidation, during which business contracts and the prices of commodities and securities decline. It is essentially an event connected with the use or abuse of capital. A panic is a temporary paralysis of a country's credit system and may be caused by any conditions which undermine the confidence on which credit is founded. A crisis is not always attended by a panic, and panics sometimes occur in years not marked by crises. For example, in the summer of 1903 there was a crisis in the investment of capital in corporate enterprises, but there was no panic. On the other hand, in 1896, near the end of the long period of liquidation following the crisis and panic of 1893, President Cleveland's Venezuela message caused a small stock-market panic in Wall Street. When a crisis is not attended by panic phenomena, the course of the subsequent period of liquidation is normal and entirely satisfactory: the necessary readjustment of prices and wages is made, speculative enterprises collapse, and weak business houses go into bankruptcy, but concerns which have managed their affairs with prudence suffer only a temporary reduction of profits. When panic attends a crisis many really solvent business houses are crushed. Crises are doubtless inevitable, for the conditions leading up to them could be prevented only by a more than human combination of sagacity and discretion. Panics, however, are unnecessary; they are almost invariably the product of remediable defects of the credit system.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

The crisis of 1907 took place in January, the panic in October. The crisis was a world-wide affair, being felt in all countries where gold was the standard money. The panic was a local manifestation, being confined to the United States.

Of the economic forces at work during the last decade, that which will probably appear to historians the most important is the great increase in the gold supply with the resultant rise of prices. The facts are too well known to need re-statement. Beginning in 1887 there was a steady increase in the world's annual output of the yellow metal, and since 1897 the production has been at a rate which would have caused dismay had it been predicted ten years before. In 1890, according to statistics compiled by the director of the mint, the world's supply of gold available for monetary use was less than $4,000,000,000. In 1907 it exceeded $7,000,000,000. At the same time, based upon this gold, there was a gigantic expansion of banking credit. In the United States, bank deposits (including those of savings banks) increased between 1890 and 1907 from $6,000,000,000 to $19,000,000,000, and practically all of this expansion took place after 1897. According to computations made by the comptroller of the currency the item of individual deposits in national and state banks increased from $7,000,000,000 in 1900 to $13,000,000,000 in 1907. During the same period, the advance beginning in 1897 and ending in January, 1907, the average prices of commodities in gold-standard countries rose some forty per cent. In the stock market the upward movement of prices during those ten years was still greater. According to computations made by Mr. James H. Brookmire of St. Louis, who bases his calculations on the quotations of twenty representative railroad stocks, the lowest point was touched in December, 1896, when the average price was 41. From then until the end of the Boer War in 1902 there was an irregular advance to 130. In the fall of 1902 began a decline in stocks which continued until September, 1903, the lowest point which these stocks touched being 88. Then began a more rapid upward movement, continuing through 1904 and 1905, the highest point, 138, being reached in January, 1906. Throughout 1906 the prices of these stocks barely held their

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

own. A rapid downward movement began in January, 1907, until in March they touched 98; then they advanced until July, when a decline began which finally carried them during the October panic down to the lowest point of 82.

It is very difficult to escape the conclusion that all this advance of prices and expansion of credit must in the main be attributed to the great increase in the world's stock of gold. This prosperous decade had much more than its share of untoward events which were calculated to restrict enterprise and hold credit in check. There were, for instance, our own war with Spain in 1898, England's war against the Boers in 1900 and 1901, the Russo-Japanese War in 1904 and 1905, the anthracite coal strike in 1902, and the Baltimore and San Francisco conflagrations. Despite all these events and others of a similar character, which tended to waste capital and destroy the confidence of conservative men in the business outlook, the tide of prosperity rolled on almost without check until the beginning of 1907, prices advancing, the stock market booming, bank clearances swelling, the average man convinced that good times, being deeply rooted in natural conditions, would persist so long as the sun shone and the rains fell.

This prosperity was by no means confined to the United States. It existed in Canada on the same scale as here, and in a lesser degree throughout Europe and in the countries of South America, in which large sums of European capital were invested. For example, the loans of Canadian banks rose from $225,000,000 in 1896 to $712,000,000 in 1907. The total bank clearings of the United States increased from $51,000,000,000 in 1896 to $160,000,000,000 in 1906; the clearings at London rose from £7,500,000,000 to nearly £13,000,000,000; and the Paris clearings from 7,000,000,000 to nearly 18,000,000,000 francs. This growth in bank clearings is a reflex, of course, of the great increase in the production and exchange of goods, the statistics of which need not be presented here.

During all this marvelous prosperity, as in all previous similar periods, silent forces were at work that were destined to bring about a reaction. Foremost among these was the in-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

sistent demand for capital for conversion into fixed forms. There are no reliable statistics showing total capital outlays in this country or in Europe. We know, however, that in the United States the capital needs of corporations, as indicated by the listing of stocks and bonds on the New York Stock Exchange, averaged over a billion dollars a year, the total in 1901 alone having been two and a half billion dollars. These figures, however, mean very little. What is much more significant is the fact that the absorption of capital during the last ten years in railroads, in the construction and enlargement of industrial plants, in subways and tunnels, in the development of South American enterprises, combined with the positive destruction of capital in three very costly wars, caused a marked advance in the rate of interest and a corresponding decline in the prices of first-class bonds. In 1897 prime commercial paper sold in New York City at from three to three and one-half per cent. In 1904 it sold at from four to five per cent. In 1906 and 1907 the rate was often seven per cent, and the average was fully six per cent. The Bank of England, except for brief intervals, has maintained rates ranging from four to six per cent for the ten years, and finally in 1907 it advanced its rate, as the result of the panic in the United States, to seven per cent. The rates of interest at other European financial centers were correspondingly high. The most spectacular evidence of the shortage of investment money in Great Britain was furnished by the decline of consols to 83.

In the United States the extent to which capital was absorbed by long-time investments is shown by the statistics of banks and trust companies. According to Mr. Muhleman,[1] the national and state banks of the United States increased their ownership of stocks and bonds from $50,000,000 in 1892 to $487,000,000 in 1907, while the amount held by trust companies increased from $142,000,000 in 1894 to $785,000,000 in 1907. Furthermore, the loans of trust companies, which are largely secured by stocks and bonds, increased in the same period from $374,000,000 to $1,602,000,000. When a bank

[1] Monetary and Banking Systems, 1908, pp. 81, 132.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

lends upon stocks and bonds as collateral it is encouraging the investment of capital in corporate enterprises. Practically the bank's own money is being locked up in long-time investments.

During 1905 and 1906 there came to light evidence that a considerable portion of the public was willing to take long chances in real estate, in mines and in numerous other enterprises of a speculative nature. This tendency did not amount to mania and was by no means confined to the United States. In Europe, in South America, in Japan and in Egypt there were signs that people with money were dissatisfied with the comparatively small returns yielded by high-priced railroad and industrial stocks and were seeking to get rich quickly by participation in schemes of problematical outcome. It is doubtful if this speculative diversion of loanable funds deserves to be regarded as an important antecedent condition of the crisis, yet it was probably a contributing cause.

Meantime the banking situation was steadily growing worse. In 1897 the cash reserves of commercial banks and trust companies in the United States amounted to about 18 per cent of the net liabilities. Thereafter there was a steady decline until 1907, when the cash reserve had dwindled to 10 per cent. Mr. Muhleman in a new edition of his *Monetary and Banking Systems*—a most intelligent and satisfactory manual of financial statistics—gives on page 107 a table showing a decline in total bank reserves from 17.9 per cent in 1897 to 11.3 in 1907. In the same table he shows that the amount of money and bank deposits "in the hands" of the people increased during this period from $4,000,000,000 to over $11,000,000,000. The decline in the ratio of banking reserve was due principally to two circumstances: (1) the growth of trust-company deposits, supporting which there was a reserve of barely five per cent; (2) the relatively smaller cash reserves kept in the country banks, many of these institutions having been tempted by high rates of interest to invest heavily in call loans and time paper in New York city. It is true that the amount of cash in the vaults of country banks increased after 1897, yet their liabilities grew in greater proportion. This decline of the country's banking reserve is regarded by

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

some as a sufficient explanation of the crisis. In my opinion, however, it can be regarded merely as evidence that the lending power of the banks was severely strained, and that any further great extensions of credit were therefore impossible. The country's low bank reserve in 1906 certainly meant that the country's business could not go on booming and expanding as it had done in the preceding years, but it did not necessarily presage disaster. The situation, however, was bad enough to make every conservative man careful as to his ventures. If in 1906 the banks of the country could have had competent leadership and could have been made to see the necessity for the careful husbanding of their resources and for the restriction of their advances upon high-priced collateral, the year 1907 would probably have passed without any great financial shock or serious loss to business interests. Unfortunately, however, there was no leader.

Another weakness in the banking situation lay in the relative decline of the ratio of capital and surplus to liabilities. The banking laws in this country do not require that a bank's capital shall bear any definite relation to the amount of its liabilities, yet from some points of view such a requirement would be more reasonable and more useful than the well-known reserve requirements. As a result, our banks are in the habit of expanding their business without regard to the amount of their capital investment, the latter seldom being increased except when the directors believe that in this way the institution can win greater favor with the public. After 1897 there was considerable increase in the total of banking capital and surplus in the United States, but it was not proportionate to the immense expansion of banking liabilities.[1]

[1] The following table shows changes in the ratio of capital to liabilities in the case of national banks between 1897 and 1907. The figures indicate millions of dollars.

	1897	*1907*
Capital	642	896
Surplus	247	548
Undivided profits	86	186
Total capital account	975	1,630
Deposits (individual)	1,669	4,319

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

If all the conditions above summarized are borne in mind, and it is remembered that the advance in the cost of living had outrun the increase in wages, so that the lion's share of the new wealth created had gone into the pockets of entrepreneurs, bankers, brokers and stock speculators, it will seem that a period of reaction and quiet was inevitable. Among the plain people of the country the farmers were the only class decidedly richer in 1907 than in 1897. Their crops had been good and had been sold at high prices. At a distance from the contagion of extravagance prevailing in the cities, they had in a measure maintained the economies taught them during the hard times from 1893 to 1897. In the cities, on the other hand, the wage-earning and salaried classes, as their incomes grew, had increased their expenditures, partly from necessity and partly because a higher standard of living seemed justifiable. This situation manifestly could not continue forever. The prices of articles of luxury in demand among the rich rose above the normal, and were certain to decline the moment the unusual profits of enterprise and speculation began to cease. On the other hand, the prices of the necessaries and comforts of life

Loans and discounts	1,898	4,678
Total liabilities	3,446	8,390
Bonds held against circulation	228	567
Ratio capital, surplus *etc.* to deposits	58	38
Ratio capital, surplus *etc.* to loans	51	35
Ratio capital, surplus *etc.* to total liabilities	28	19
Percentage of capital in bonds	34	63

In 1897 the total capital investment of bank stockholders equalled 28 per cent of total liabilities; in 1907 it was only 19 per cent. The increase of the capital investment in bonds to secure circulation from 34 to 63 per cent cannot be viewed with satisfaction, for it indicates a relative decline in the banks' control of quick assets, their power to satisfy the demands of depositors being thereby lessened.

Between 1894 and 1907 the capital investment of state banks increased from $346,000,000 to $753,000,000, and the deposits from $658,000,000 to $3,069,000,000; the ratio of capital to deposits declining from 52 to 24. The trust companies make a better showing. Their capital and surplus increased from $172,000,000 in 1894 to $674,000,000 in 1907, and their deposits from $471,000,000 to $2,062,000,000; the ratio of capital to deposits declining only from 36 to 32.

Taking together the totals for national banks, state banks and trust companies, we find that the percentage of capital and surplus to total assets declined from 28 in 1894 to 19 in 1907.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

could not long be maintained above the level warranted by the incomes of the working classes.

The crisis which began in January, 1907, was the effect primarily of the exhaustion of capital funds by wars, industrial and general business requirements and speculation; and it was more severe in this country than elsewhere because our banking institutions had made unduly heavy advances on securities, had suffered their cash reserves to dwindle to the danger point and had not properly increased their assets by the enlargement of their capital and surplus accounts. The crisis was marked at the start by a rapid decline of stocks in the month of January, 1907—a decline that was not checked until the end of March. This drop of stocks, which has passed into history as the "silent panic," was due in the main to the fact that certain large interests were obliged to sell and that there were no buyers willing or able to pay the high prices at which stocks were quoted at the beginning of the year. During 1906, on account of needs that seemed imperative, railroads and other corporations had subjected the money market to intense strain by their issues of new stocks and bonds. As business was active in Europe, the Bank of England had been forced to raise its rate of interest to six per cent in order to protect its gold reserve. Railroad earnings had been large during 1906, but Congress had passed the Hepburn Rate bill and among investors there was a fear that the future of railroads was under a cloud. The important factor, however, was the shortage of capital as compared with the vigorous demand for it from merchants and manufacturers all over the country. The country banks, in order to take care of their home customers, were obliged to drop their loans on securities, and these had to be sold by the owners, for the New York banks were unable to make advances on them.

The situation was, in many respects, similar to that which prevailed in 1903, when the New York banks found themselves burdened with collateral of declining value. There had then been two years of great activity in the stock market and large issues of the stocks of industrial corporations had been underwritten and put upon the market. The financiers had overestimated the capacity of the public to digest securities. In

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

other words, there was then a shortage in the supply of investment funds and an imperious need for money in business, which made necessary the withdrawal of support from Wall Street. That crisis was temporary in its effects, being confined mainly to the financial market. Nevertheless, for a year the country's business ceased to expand, some industries were obliged to curtail operations, and the total of failures was unusually large.

The crisis of 1907, if our banking system could have stood the strain, would probably have been only a little more severe than that of 1903. In 1907 the country's business was more expanded; the prices of securities and of commodities were higher; debts were bigger; there were in existence more new enterprises whose prosperity depended on the continuance of boom times; and more money was locked up in unproductive real estate and worthless mining stocks. All this meant that a more painful and probably longer period of liquidation was necessary than in 1903; but there should have been no panic; no sudden or general shut-down of factories, no long list of failures, no army of unemployed men. We should have had a year or two of enforced economy, of sagging commodity prices, of part-time employment of labor and of reduced dividends, but not a year or more of worry and distress.

There are several good reasons why this critical year might have been lived through without panic and without a single sound concern being pushed to the wall. I shall stop to mention only two of them.

First, the great industries of this country are in very strong hands. Whatever may be the evils of industrial combinations, there can be no doubt about one of their great benefits: they bring the greatest industrial wisdom the country possesses to bear upon the employment of capital. We may not approve of all their policies nor of some of their methods, yet we must admit that the men who are managing the dozen great railroad systems of the United States and the great industrial combinations in steel, copper, leather and other important staples, are vastly better qualified for their work than were the thousands of small men who were in control, and were working at cross purposes with one another, in the same fields twenty years ago.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

This is a matter which the public does not generally understand. Everybody admits that capital is timid; yet the average man fails to see that, since the timidity of capital must make it eager to avoid unnecessary risks, it must follow that the large owners of capital will be willing to entrust the management of their affairs only to men of the clearest heads, strongest wills and highest characters. The day of the financial pirate and freebooter in the United States has come almost to an end. This is not recognized by the American people, and President Roosevelt may have some doubt about it, but I, for one, am convinced that it is so. And it is because the great manufacturing and transportation interests of this country are now under the direction of our ablest business men, who know and would avoid the evils of fluctuating prices, panics and unemployed labor, that I believe the capital and stock market crisis of 1907 would have brought no great shock to this country if our banking and currency system had not been inherently and fundamentally unsound.

A second great strengthening force, which was lacking in 1893, is found in the financial condition of the agricultural classes. Twenty years ago the western farmer was carrying heavy mortgages. To-day he belongs to the capitalist class. Farmers have profited by the rise of prices during recent years: they have gotten out of debt and have saved money. The panic of October caused very little disturbance in rural communities, and the subsequent depression of industry has given the farmer little concern. That the agricultural classes are in good condition is indicated by the fact that bank clearings in the smaller western and southern cities were almost as large in June, 1908, as during the same month in any previous year. As farming is our basic industry, so the farmer is our most important consumer. Since he is now in an easy condition, our industries are not likely to suffer long from a weak demand for their products.

The reader will be justified in inferring from the foregoing that I do not regard the panic of 1907 as a great industrial and financial cataclysm, such as were the panics of 1873 and 1893. I certainly do not. On the surface, the events of 1907 were

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

more startling, more spectacular, more unexpected than the events of either 1873 or 1893. There was a greater fall of prices in the stock markets; rates of interest here and in the great centers of Europe were lifted higher; there were more evidences of popular excitement, more runs upon banks, larger issues of emergency currency, more hoarding of money and a longer period of bank suspension. All these phenomena, however, are superficial. They can be produced at any time by unreasoning fright. They tell no story whatever with regard to the fundamental conditions of trade and industry.

The panic itself was the product of a combination of circumstances: the exhausted lending power of banks, their lack of organization and unity, the crop-moving demand for cash and, finally, a public with nerves set on edge by the insurance scandals, Mr. Lawson's romance about the "system," President Roosevelt's tirades against predatory wealth and various dire prophesies uttered by leaders in financial and industrial affairs.

Among the panic-producers we must also reckon the currency reformers. It is astonishing how little the average business man knows—or did know two years ago—about the way banks are run. About two years ago the newspapers began to take an interest in the currency. Their editorials and articles, showing how dependent every bank is upon the solvency of other banks, how helpless all would be in case of a panic, and how the magnificent total of their deposits represents a gigantic indebtedness created by loans and many times exceeding the amount of cash in the country, undoubtedly possessed for many readers an unsuspected "news" value. "What would happen if all the depositors wanted their money at the same time?" That question was in people's minds more than ever before, and there was only one answer—panic.

In a country having a model banking system—such a system as experience has thus far shown to be best—no combination of evil conditions could cause general loss of confidence in banks. On the other hand, under the banking system of the United States, no augmentation of cash reserves and no guaranteeing of deposits will save us from panic. Unless the reserves equaled one hundred per cent of deposits, in which case

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

the bank would cease to be a credit institution and become a mere safe-deposit vault, the time would come when frightened people would question the ability of the guarantor and insist upon the conversion of their deposits into cash. Our banks had an abundance of cash last October, but millions of it were hoarded where it was not wanted, and the other millions were so scattered among 16,000 institutions that there was weakness and terror everywhere and strength and confidence nowhere. If, when the Knickerbocker Trust Company closed its doors, our bankers had displayed confidence and had adopted a liberal policy toward borrowers, the day might have been saved: or if the Clearing House banks of New York had supported the Knickerbocker Trust, as the Bank of England supported the Barings in 1890, there would probably have been no panic. However, we have no right to blame the country banks because they grabbed all the money in sight, nor the New York banks because they let the Knickerbocker go down. Both banks and depositors were in the meshes of a system, not the bogy system of Mr. Lawson, but an artificial, law-imposed system, which made it impossible for the strong to succor the weak or for the weak to utilize their own resources in self-defence.

The remedy lies, not in tinkering up the present system, not in compelling country banks to carry larger cash reserves in their own vaults, not in a law compelling city banks to accumulate large reserves in the spring and summer, but in the creation of a new system of banking, of which existing banks shall be coördinate, independent units. The October panic made perfectly clear two great banking needs: (1) an elastic currency; (2) financial solidarity.

By elasticity of the currency nothing more is meant than that the banks, or some of them, should possess the right to utilize their credit as a common medium of exchange. Fortunately for the banks, and for business interests as well, the American people are not at all discriminating or particular in their notions as to the meaning of the words cash and money. That was proved during the panic by the cheerful alacrity with which they absorbed the emergency currency of small banks, clearing

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

houses and business corporations. That our banks should have the legal right to do what they did outside the law during the panic is now pretty generally admitted. How that right can be given them without raising the menace of inflation is the question to be solved. It is not easy to solve. A banking circulation cannot be elastic unless the country's currency is at all times saturated with bank notes, and not then unless the banks are unable in ordinary times to get into circulation all their authorized quota of notes. As the people of the United States are now using nearly a billion dollars of paper "money," all of which is good in banking reserves, being directly or indirectly redeemable in gold, it is evident that any scheme to create an elastic currency to be issued by national banks must take into account the danger of inflation resulting from the substitution of bank notes for this billion of "lawful money." It was one of the merits of the Fowler bill—favorably acted upon last winter by the House Committee on Banking and Currency—that it recognized and sought to avoid this peril. The bill aimed so to enhance the privileges and advantages of national banks as to make probable the nationalization of many state banks and trust companies and the impounding in their reserves of a large part of the "lawful money" now in the hands of the people. Critics complained of the complexity of this bill. Complex it certainly was; but its complexity was no greater than that of the problem it aimed to solve, for it sought to obtain both elasticity and security merely by amendment of the present system.

There is only one simple, sure and safe way out of our financial wilderness, and that is the way pointed out by the special currency committee of the New York Chamber of Commerce in 1906, namely, a central bank of issue under government control. Of such a bank the greenbacks and silver certificates would essentially be note liabilities, for it would be responsible for their redemption in gold. Its branches, taking the place of the present sub-treasuries, would collect and disburse moneys for the government without interference with the loan market. To the banks it would be an instrument for the immediate conversion of prime assets into cash. To the people, on account of its immense reserve of gold, its note-issuing power and its

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

prestige as a government institution, it would seem an indestructible bulwark of finance, an unassailable guardian of national solvency. It is frequently objected that the United States has twice experimented with such a bank, and that both experiments were unsuccessful. As a matter of fact, the first and second banks of the United States were not government banks. They were private institutions endowed with valuable special privileges, and they failed to win the undivided support of the public because of the possibility that they might be administered solely for the advancement of the political and financial interests of private citizens. Our experience with these two banks should warn us against the adoption of the Bank of England as a model, but it furnishes no evidence whatever that an institution like the Bank of France would not be in accord with our political conditions as well as beneficial to our financial and business interests.

The Vreeland-Aldrich compromise, the latest effort of Congress at the improvement of the National Bank Act, promises very little of good or evil. Its good feature is its recognition of commercial paper as a suitable basis for banknote issues, but the machinery provided for getting out the emergency currency is so cumbersome and the tax on the notes so heavy that the act will probably prove of little avail in lessening the financial stringency of the crop-moving period. As a shield against currency panics it will probably prove a complete failure. In fact, it weakens rather than strengthens the situation of the banks in a panicky time. Last fall, the law providing no way of relief, the banks promptly put forth an emergency currency less costly than the Vreeland-Aldrich notes and quite as acceptable in the localities where they were needed. The law, furthermore, is defective in that it fails to provide a way for the voluntary withdrawal of banks from a "national currency association," so that a bank that has once availed itself of the privileges of the act must, even though it retire all its own notes, continue liable in part for the notes of other banks. This defect will doubtless keep some of the strongest banks from even testing the doubtful advantages of this act.

JOSEPH FRENCH JOHNSON.

NEW YORK UNIVERSITY.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

THE BRITISH SOCIALIST LABOR PARTY

AT the general election in January, 1906, at which the then newly formed Campbell-Bannerman administration was returned to power, fifty-seven Labor representatives, of three different schools, were elected to the House of Commons. Twenty-nine of these were of the Independent Labor party, which has since become known as the Socialist group. Fourteen were miners' members and formed what has now come to be known as the Trade Union group. The third group, also of fourteen, was known as Liberal Labor, from its close and official connection with the Liberal party in and out of Parliament. The history of Labor representation from the election of Macdonald and Burt in 1874 to the return of these fifty-seven members at the last general election was briefly sketched in this journal two years ago;[1] and the purpose of the present article is to continue that history by tracing the development in this parliamentary Labor movement that took place between the opening of the Parliament of 1906, with the late Sir Henry Campbell-Bannerman as premier, and the incoming of the Asquith administration, April 8, 1908.

All three Labor groups obviously had their influence on the legislation and the administrative action of the Campbell-Bannerman government, in which the old-line Labor group was directly represented by John Burns, president of the Local Government Board. It is, however, chiefly with the Socialist Labor group that I am here concerned. This group is singled out because, during the two years and four months of Campbell-Bannerman's premiership, its strength was increased from twenty-nine to thirty-two, and it came to be regarded, in and out of Parliament, as the embodiment of the new independent and aggressive Labor movement in British politics.

From the first there were cordial relations and a working agreement between the Trade Union group and the Socialist

[1] Edward Porritt, "Party Conditions in England." POLITICAL SCIENCE QUARTERLY, June, 1906, XXI, 206–236.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Labor group. The conditions of the agreement were that the two groups should act together on labor questions, should meet monthly to consider the basis of common action in Parliament, and should not oppose each other's candidates at elections.[1] At one time there were expectations that the two groups would join forces and work as one organization in the House of Commons. But from 1906 to the end of the Campbell-Bannerman administration in April, 1908, the Socialist group was the only one of the Labor groups that followed the long-standing precedent of the Irish Nationalists and permanently established itself on the benches below the gangway on the opposition side of the chamber. From the beginning of the Parliament of 1906 the Socialists have had their own House of Commons organization. It is patterned on that of the Nationalists. Keir Hardie was at the head of the Independent Labor movement from its beginning in 1899 until the end of the session of 1907. At the beginning of the session of 1908 he retired from the parliamentary chairmanship, owing to ill-health, and was succeeded by Arthur Henderson, a moulder by trade, who has represented the Barnard Castle division of the county of Durham since 1903. The group has its own secretary and its own whips; and, unlike the members of the Liberal Labor group, its members do not go into council with the Liberals and do not receive government whips. In and out of Parliament they act as an independent party; so much so that, on thirteen or fourteen occasions since the general election of 1906, they have opposed Liberal candidates at by-elections, either carrying the contested seat for their candidate, throwing it into the possession of the Conservatives, or reducing the majority of the government candidate.

Socialist Labor attitude towards the House of Commons

There have been Labor members of the House of Commons since 1874. In the short-lived Parliament that was dissolved on the Home Rule bill—the Parliament elected in 1885, after the extension of the franchise to the working classes in non-

[1] *Cf.* Report of Conference, Independent Labor Party, at Hull, April 21, 1908.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

parliamentary boroughs—the number of these Liberal Labor representatives went up to ten, and in the Parliament that was elected in 1892 there were sixteen; but until 1906 there had never been a large group of Labor representatives independent of both the two historic political parties. During the session of 1906 there was consequently keen interest in the attitude of the Socialist Labor group towards the House of Commons itself, and also towards the Liberal party and the government. With some politicians this interest was sympathetic and friendly. With others there was a hope that the Socialist group would adopt tactics similar to those brought into play by the Nationalists between 1878 and 1886, especially in the early years of Parnell's leadership, when Biggar was closely associated with Parnell in the parliamentary struggle of the Nationalists. There was an expectation that the aggressive spirit of the Socialists would impel them to make themselves a nuisance in the House; that they would disregard its traditions, adopt tactics that would jar on the Commons and on the country, and thereby bring discredit on the new labor movement.

These expectations were not realized. Although not more than three or four members of the Socialist group had been of the House before 1906, the group, as a whole, adapted itself at once to House of Commons ways and usages, and its members were quick to master the rules of procedure. In the sessions of 1906 and 1907 there was no obstruction by the Labor men. There was no undue eagerness on the part of any members of the Socialist group to attain prominence in the House and country by frequent intervention in debate. The discipline of the group would have checked any such tendency had it appeared; for it is the rule that the one or two members most practically conversant with a subject shall be deputed to express the views of the group. The specialization thus brought about and the moderation exercised by the group, as regards intrusion on the time and attention of the House, have so far answered well. The chosen representatives of the group have secured the ear of the House and the attention of the government; and, moreover, this policy of the careful selection of speakers has tended to fuller reporting of their speeches in the daily news-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

papers than would have been the case if no such discipline had been exercised, with a resulting gain to the Socialist propaganda in the constituencies. Neither in England nor in Scotland is there a daily newspaper that gives editorial support to the Socialist Labor movement. The only newspapers of the party are the *Labour Leader* and the *Clarion*, both published weekly, and a few weekly propaganda journals which have only local circulations. But the growing strength of the movement in and out of Parliament makes the reporting of the speeches of the Labor members in the House of Commons incumbent on those London and provincial newspapers which still aim to give full and complete records of political thought and movement.

As regards the position in the House of Commons which the Socialist Labor group has made for itself by these methods there is no lack of testimony. "Most of the Labour members," wrote the parliamentary correspondent of the *British Weekly*, before the session of 1906 had come to an end, "are liked by the House. They are frank and obliging, and have remarkably little rancour. At first some of them were inclined to be noisy in their interruptions; but they have since adopted the parliamentary tone."[1] Within a few days after this commendation appeared in the *British Weekly*, one of the ministerial whips—A. O. Murray, the Master of Elibank—also paid a tribute to the Socialist group, then led by Keir Hardie.

> They were [he said] able, clever men, and great parliamentarians. They worked together; they were assiduous in their duties; they had studied economic questions; they knew what they wanted; and they were men who, however he might disagree with their opinions, had earned respect in the House of Commons because their conduct in that chamber had been in accordance with the highest and best parliamentary traditions.[2]

In the early days of the session of 1907 the parliamentary correspondent of the *Tribune* wrote:

> The discipline of the Labour party is wonderful. They reserve their activities for matters on which they can speak with authority, and the

[1] *British Weekly*, August 9, 1906. [2] *Tribune*, London, August 27, 1906.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

oversight of every section of the political field which concerns them is deputed to the member who knows most about it. In a word they choose their own foremen. Added to all this, they have shown a fine facility for adapting themselves to the traditions of the House. They have a wise regard for its habits; they do not presume on their success; they even, occasionally, restrain their inclination to interrupt speakers who attack them. They reap their reward in the esteem of a House, which is gentlemanly in all its instincts, and infinitely prefers a labourer in earnest to a lord with affectations.[1]

None of these tributes to the place which the Socialist Labor group has made for itself in Parliament is from men or newspapers in sympathy with the movement. They are all from men who are of the Liberal party—men who fear that in the constituencies the Socialist Labor group will continue to draw electoral support which, in the absence of an independent progressive party, would be thrown to Liberal candidates.

Attitude towards the Campbell-Bannerman government

The attitude of the Socialist group towards the Campbell-Bannerman government can be judged from the utterances of the members of the group, but best of all from its aggressive action at the by-elections. In the House of Commons the party followed the line of policy which was decided upon when its leaders were busy with their preparations for the general election of 1906. One of its foremost members then declared that the attitude of the party to a Liberal government would be

one of independent though friendly coöperation, not generally, but on every occasion on which the Government was promoting legislation acceptable to the Labour party. On the other hand no consideration for the fate or fortune of the Government would prevent the Labour party from opposing to the extent of its power any proposal of the Government which was not acceptable to it.[2]

Midway through the session of 1906, by which time the Socialists were opposing Liberal candidates at by-elections,

[1] *Tribune*, London, March 25, 1907.

[2] "The Labour Party and the General Election." *The Independent Review*, August, 1905.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

another member of the party restated its position towards the government.

The Labour party would not throw out the Government because they did not introduce measures to suit them—they would try to improve the measures. The Labour party was a separate party in the House, and the Government knew that their position in the House was to watch them and to improve their measures.[1]

On other questions than those directly affecting labor the group took a line of its own. In the session of 1906, it went into the division lobby against the government and carried with it a number of Radical members who sit on the government benches, but who at times act with the Labor groups. This division was on a motion by Keir Hardie, to put the salary of the secretary of state for India upon the estimates, so as to give the House of Commons more control over Indian affairs. The Radicals who had voted with the Labor men were admonished by the Liberal whips; and again in the session of 1906, after a number of Liberal and Radical members had gone into the opposition lobby with the Labor men on their Trades Disputes bill, they were told by the whips that the attention of the Liberal associations in their constituencies would be called to their desertion of the government.[2] In the session of 1907 one of the most important measures not directly connected with labor was the bill of R. B. Haldane, secretary of state for war, abolishing the old organization of the auxiliary forces—the militia, the yeomanry and the volunteers—and reorganizing them into what are now known as the territorial forces. The government had little aid from the Socialist Labor group in the legislation necessary to this reorganization. The attitude of the group was defined by its parliamentary committee, at the conference of the Independent Labor party, held at Derby, on April 3, 1907. The Territorial Forces bill, the committee affirmed,

makes the volunteer a soldier who lives at home instead of in barracks.

[1] D. J. Shackleton, at Higham, Clitheroe, October 12, 1906.

[2] *Cf.* speech by Keir Hardie, at Ardrossan. *Tribune*, London, September 17, 1906.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

It extends the scope of military law. It hands over the rank of officer to the wealthy classes. It incorporates school corps and other brigades of children into the territorial army; and it makes the conditions of the service in these volunteer forces so arduous as to render it highly improbable that there will be a sufficient response on the part of the rank and file. Conscription will then stare us in the face.

At the same conference the parliamentary committee reported on the attitude of the Labor group towards the administrative departments of state and towards the civil service.

Our short experience has been sufficient to teach us that it is as important to democratize our administrative departments as it is to democratize our statute book. We have found that the doors to the higher offices in Whitehall are closed to every one who has not had a middle-class or an aristocratic education; and recent changes have placed our civil service more completely in the hands of the wealthy classes. Promotion in the navy, the organization of secondary education, the appointment of mine and factory inspectors have become less democratic than they have been, and the Labor party, almost unaided, has undertaken to stop this downward process. Democratic laws administered by permanent officials prejudiced against them are not likely to produce the results which you and we desire.

Opposition to Liberal candidates at by-elections

In the two years and four months that intervened between the general election of 1906 and the reorganization of the cabinet in April, 1908, there were thirty-eight contested by-elections, At fourteen of these there were three-cornered fights, due to the intervention of Socialist Labor candidates, or of Socialist candidates who, at the time of the election, were not associated with the Independent Labor party. All but three or four of these candidates were, however, of the Socialist Labor party, and had the support of the Independent Labor or Socialist group in the House of Commons.

The first of these three-cornered contests occurred when the first session of the Parliament of 1906 was not two months old. On March 12, 1906, there was an election for the Basingstoke division of Hampshire, at which the poll for the successful Conservative candidate was less than the total poll of the Liberal

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

and Labor candidates. The vacancy was due to the death of a Conservative member, so that the election did not result in the loss of a seat to the government. The next of these contests was in the Cockermouth division of Cumberland. There the vacancy was due to the death of Wilfrid Lawson, who had been a Liberal member of the House of Commons since 1859. The constituency is partly industrial, as many of the electors are employed in mining and at iron works. The Labor group set up a claim to the seat. In opposition to the government candidate, the son of a peer whose wealth had been accumulated in the iron industry of South Wales, the Labor party nominated a trade-union leader. By their action they enabled the Conservatives to win the seat easily, thus inflicting on the Campbell-Bannerman government its first reverse at the by-elections. Four months later, in November, 1906, there was a vacancy at Huddersfield, owing to the fact that the Liberal member had accepted a permanent government appointment. Again the Labor party nominated a candidate, and the government candidate carried the seat by a majority of only 340 votes. The successful candidate polled 5762 votes; the Labor candidate came next with 5422; and 4844 votes were given to the Conservative candidate, who, with Cockermouth in mind, had been confident that he would carry the seat. Early in 1907 a by-election was rendered necessary by the appointment as ambassador at Washington of James Bryce, who had sat for many years for one of the divisions of the city of Aberdeen. At this election, in February, 1907, the government candidate had to meet the opposition of a Socialist candidate not attached to the Independent Labor party, who polled 1740 votes, as compared with 3779 for the Liberal candidate and 3412 for his Conservative opponent.

The first loss of a Liberal seat to the Labor men came in July, 1907, when the government candidate at Jarrow was defeated by Pete Curran, a member of the Socialist Labor party. There were four candidates for a seat which had been held by a supporter of the government. The Labor candidate polled 4698 votes; the Conservative, 3930; the Liberal, 3474; and the Irish Nationalist candidate, 2124. Jarrow was described

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

by the newspapers supporting the government as a surprise. Two weeks later, in the Colne Valley division of Yorkshire, there came what the Liberal newspapers described as a "galvanic shock."[1] The vacancy there was due to the bestowal of a peerage on a wealthy Liberal member of the manufacturing class—an honor which would probably have been postponed had the government whips had any idea that the failure of the Liberals at Cockermouth and Jarrow would be repeated. The local organization of the Socialist party in the Colne Valley, acting independently of the Labor party of the House of Commons, nominated Victor Grayson, an unattached Socialist, who was elected by a majority of 153 over Philip Bright, a son of John Bright. The vote for Grayson was 3648; for Bright, 3495; and Wheeler, the Conservative candidate, polled 3227 votes.

Jarrow and Colne Valley were the complete electoral successes of the Labor and Socialist movement during the existence of the Campbell-Bannerman government. These elections increased the number of Independent Labor and Socialist members in the House of Commons from twenty-nine to thirty-one; and the number was further increased to thirty-two by the action of the Durham Miners' Union. At the general election John Johnson, who has been an agent of the Durham miners since 1890, was elected at Gateshead as a Liberal Labor member. He had the support of the Liberal party in the constituency, and during the first session of the new Parliament he was one of the Liberal Labor group which sits on the government side of the House and acts generally with the government and the Liberal party. Johnson's parliamentary salary, however, came out of the funds of the Durham Miners' Union, and it was on instruction from his union that Johnson transferred himself from the government benches and joined the Independent Labor group on the opposition side of the chamber.

Encouraged by these successes in the constituencies, by the consternation which Jarrow and Colne Valley had created in the Liberal party and by the attention which their wide and

[1] *The Nation*, August 24, 1907.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

persistent propaganda was attracting from both the old political parties, the Independent Labor party threw even more vigor into their electoral activities. In September there was a vacancy in the Kirkdale division of Liverpool. Since the Reform Act of 1832 Liverpool has been the most consistently Conservative city in England; and the Kirkdale division, like most of the nine divisions of Liverpool, has long been represented by a Conservative. At the general election in 1906 the Liberals did not nominate a candidate. There was then a Labor candidate, who polled 3157 votes to 3749 votes polled by the successful Conservative candidate. In September, 1907, the Liberals again allowed the election to go by default. The Labor group, however, persisted in their attentions to the constituency; and after one of the most remarkable parliamentary contests of recent times—a contest in which the curb-stone methods of propaganda of the Labor party were frankly adopted by their antagonists—the Conservatives again carried the seat. Their candidate polled 4000 votes. The Labor candidate's poll was 3330, an increase of 173 on the vote for the Labor candidate at the general election in 1906.

Kirkdale is the only constituency in which, since the general election, Labor or Socialist candidates have had only a Conservative candidate to fight. The next contest—that at West Hull, in November, 1907—was of the usual three-cornered character. The vacancy was caused by the succession of the Liberal member to a recently created peerage. A brother of the new peer, a member of a family long identified with the shipping activity of Hull, was the Liberal candidate. He carried the seat against both Labor and Conservative opposition. Hull had not been before 1907 the scene of an election in which the new Labor party was concerned; although in 1895 there was a Labor candidate, not associated with any national organization, who polled 1400 votes in a contest with a Liberal candidate. In 1907 there were three candidates. The successful Liberal polled 5623 votes; the Conservative, 5382; and the Socialist Labor candidate, 4512. One significant element in the large vote for the Labor candidate at West Hull was the support accorded him by electors who usually vote with the Con-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

servative party. Upon this fact the *Yorkshire Post*, the most important Conservative daily newspaper in provincial England, commented as follows:

> Unionists will be glad that the Labour candidate has not given the country a repetition of Jarrow or Colne Valley. But the progress made by his party points clearly to the central feature of British politics now and at the next election—in all likelihood for much further ahead. Perhaps the worst feature of this West Hull accession to the Labour party is the fact that apparently Mr. Holmes has taken a number of votes from the Conservative party. At the general election the total of votes polled was 15,057; yesterday it was 15,517. There must, of course, have been changes, so that no exact handling of the figures for purposes of deduction is possible; but if Mr. Holmes, as is probable, has attracted the 2029 votes by which Mr. Guy Wilson has failed to reach his brother's poll at the general election, it would seem also that 1023 Unionist votes polled by Sir John Sherburn, two years ago, have now gone to Labour.[1]

In 1908 the government lost seats in Mid-Devon and in Peckham; but there was no active intervention of the Labor party in either of these constituencies. In South Leeds, in February, 1908, the Labor group ran a candidate against the government candidate. In a three-cornered contest the seat was retained by the government, whose candidate polled 5274 votes, as compared with 4915 votes for the Conservative candidate and 2451 for the candidate of the Socialist Labor party.

There was a miniature general election in April and May, 1908, consequent on Campbell–Bannerman's retirement and the reorganization of the administration. John Morley, Henry Fowler and Edmund Robertson went to the House of Lords—a promotion which necessitated by-elections at Wolverhampton, at Dundee and in the Montrose Burghs. The acceptance by Churchill and Runciman of new offices in the ministry led to by-elections in Northwest Manchester and Dewsbury. There was also a by-election at Stirling, the constituency which Campbell–Bannerman had represented in the House of Commons for forty years. Wolverhampton and Stirling were the

[1] *Yorkshire Post*, Leeds, November 30, 1907.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

only constituencies in which the government candidates had not to encounter the opposition of the Socialists. At Dewsbury Runciman was opposed by a candidate of the Socialist Labor group as well as by a Conservative. The newly-appointed president of the Board of Education carried the election, polling 5594 votes, as compared with 6764 polled by him in the same constituency at the general election. The poll of the Socialist Labor candidate was 2446, as compared with 2629 in 1906. The vote for the unsuccessful Conservative candidate was 4078, as compared with 2959 at the general election. Northwest Manchester, the constituency represented by Churchill while he was under-secretary of state for the colonies in the Campbell–Bannerman administration, was represented by a Conservative from 1885 to 1906. In May, 1908, when Churchill sought re-election there after his appointment as president of the Local Government Board, he was opposed by a Conservative and tariff-reform candidate and also by a candidate of the Social Democratic Federation—an organization which came into existence twenty-eight years ago, which has fought numerous parliamentary contests, but which so far has not succeeded in electing one of its candidates to the House of Commons. At an election in which 10,691 voters went to the poll, the Social Democratic candidate received only 276 votes. Assuming that all these votes would, in the absence of a Socialist candidate, have gone to Churchill, they would not have saved the seat for him; for the successful Conservative candidate polled 5417 votes, as compared with Churchill's poll of 4988. It was the government's education policy and Asquith's drastic licensing bill that brought about Churchill's defeat. The Catholic vote was thrown to the Conservative candidate; and every brewhouse in Manchester and every liquor shop in the constituency was a center of Conservative activity. After his defeat at Manchester, Churchill went to Dundee. There a contest awaited him similar to that of Runciman, his ministerial colleague, at Dewsbury. Dundee has two representatives. At the general election one of the seats went to Robertson, who was parliamentary secretary to the Admiralty in the Campbell–Bannerman government, and the other to

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Alexander Wilkie, of the Boiler Makers' Union, who is of the Socialist Labor group in the House of Commons. When Robertson's seat was vacated, the Socialists attempted to secure this also; but their candidate, Stuart, polled only 655 votes. Churchill's poll was 7079; and for the Conservative candidate, a Dundee manufacturer, the poll was 4014.

Stuart's platform at Dundee was typical of the platforms of the Socialist Labor party's candidates at this series of by-elections. In the forefront of his appeal to the constituency Stuart put the question of unemployment. He complained that the Unemployed Workmen's bill introduced in the session of 1908 by the Labor group—what has come to be known as the "Right to Work" bill—was unfairly treated by the Campbell-Bannerman government when it was defeated at second-reading stage, on March 13, by 265 votes to 116. Stuart pledged himself, if elected, to support the reintroduction of the bill or the introduction of some other measure based on the right to work and on the duty of the state to see that none of its subjects shall suffer from starvation. Non-contributory old-age pensions and a universal eight-hour day were put forward as remedies for poverty and as a check upon emigration. Stuart, like all the members of the Socialist Labor group, was opposed to tariff reform and protection. As to the liquor question, which at that time was in the forefront in English constituencies, he held that the trade should be controlled by the people. Education, he contended, should be free in all grades; and there should be free meals for the school children who required them, the cost of the meals to be an imperial charge and not, as at present under the Free Meals Act of 1906, a charge on the municipalities. Other planks in Stuart's platform were better housing for the working classes, the taxation of land values (a subject of much present interest in Scotland), home rule for Ireland, adult suffrage and international arbitration.[1] On this platform Stuart polled but 665 votes, as compared with 6833 for Wilkie at the general election. But in 1906 the Socialist Labor candidate had the support of the Dundee

[1] *Cf. Glasgow Herald*, May 1, 1908.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Liberals, whereas in 1908 Stuart was attempting to bring about the defeat of a member of the Liberal cabinet.

The seat for the Montrose Burghs, which John Morley held from 1896, when he failed of re-election at Newcastle, went at the by-election to Robert Vernon Harcourt, son of the late William Harcourt. For the successful Liberal candidate there were 3083 votes; for the Socialist Labor candidate, 1937; and for the Conservative candidate, 1576. The total poll was larger than in 1906. As at West Hull, the Socialist Labor candidate drew his support from electors who had hitherto voted with the Conservatives, as well as from Morley's former supporters; for Harcourt polled some 330 votes less than were polled for Morley, and there were 346 fewer votes for the Conservative candidate in 1908 than at the general election in 1906. It was this turn-over from both the Liberal and Conservative candidates and the new electoral strength, which obviously went to the Socialist candidate, that gave him a vote of nearly two thousand at an election in which 6596 voters exercised the franchise.

The by-elections in England in the early months of 1908 produced unmistakable signs of a reaction against the Liberal government. This was the case at Hastings, Peckham and Wolverhampton, where there were no three-cornered contests, the Socialists not putting up candidates. But in the early days of the Asquith administration there were no such evidences of reaction in Scotland. What may be described as the two progressive parties—the Liberal and the Socialist Labor—developed increased strength at these by-elections; and at Stirling the seat so long held by Campbell-Bannerman was retained by a supporter of the Asquith administration.

Strength of parties at the incoming of the Asquith government

After the by-elections following the incoming of the Asquith government, there were in the House of Commons thirty-two Independent Labor members, and there were still, as in 1906, fourteen Trade Union members and fourteen Liberal Labor members. Henry Broadhurst, who began life as a stone-mason, who was secretary of the parliamentary committee of the Trade

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Union Congress from 1875 to 1890, and who was of the Liberal Labor group in the House of Commons from 1880, retired from the representation of Leicester in March, 1906. At the general election two months earlier, the Socialist Labor candidate, Ramsay Macdonald, had carried the second seat at Leicester; but when Broadhurst retired the Socialists made no effort, as later at Dundee, to obtain both seats, and a Liberal candidate was permitted to make a straight old-line party fight against the Conservative. He was successful; and by this change in the representation of Leicester the Liberal Labor group in the House of Commons was reduced to thirteen. It was further reduced to twelve by the defection of the miners' representative from Gateshead; but between 1906 and the formation of the Asquith government in April, 1908, Liberal members who had died were succeeded in Northwest Staffordshire and Northeast Derbyshire—both mining constituencies—by Miners' Union representatives. By these elections the losses at Leicester and Gateshead, so far as they affected the Liberal Labor group, were made good, and the strength of the group was maintained at fourteen.

The government majority, when the newly elected House of Commons assembled for the first time, was 242, not including the 29 Socialist Labor members or the 83 Nationalists. Before the session of 1906 was a month old two members elected as Conservatives threw in their lot with the Liberals, bringing the majority of the government up to 244. This number has since been reduced by three, as a result of the gains made by the Socialist Labor party; and between the by-election at Cockermouth in August, 1906, at which the government sustained its first loss, and the by-election at Stirling in May, 1908, six seats were wrested from the government by the Conservatives. The Asquith ministry started on its career with a majority on the government benches of 231, not including the 31 Socialist Labor members or the 83 Irish Nationalists. Four of the nine losses to the Liberal party between the general election in 1906 and May, 1908, are directly traceable to the action of the Socialist Labor party, one of these—that at Cockermouth—resulting in an increase in the strength of the Conservative

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

party. The number of seats gained by the Conservatives, in the two years and four months over which the Parliament of 1906 had extended at the time of the reorganization of the Liberal government, were much less than the aggregate electoral losses of the party in power in a corresponding period in any previous Parliament.

Socialist Labor propaganda and Liberal alarm

The electoral activities of the Socialist Labor party are, after all, only part of a more continuous and wider propaganda carried on in most of the industrial constituencies of England and Scotland. The Labor party is always at work; and its propaganda methods are more akin to those of the Salvation Army than to those of the two older political parties in educating the electorate as to the principles and measures for which the parties stand. Unlike the two older parties, the Labor party has no daily press which in season and out of season is pushing its propaganda. This lack and the complete dependence on the efforts of its own adherents were realized from the outset. It was realized that the conventional methods of the older parties promised no great success for the new movement, and the curbstone was early adopted as the rostrum of the Socialist Labor party.

The unprecedented success of the party at the general election in 1906 was largely due to this curbstone propaganda and to the efforts of hundreds of volunteers, missionaries whose enthusiasm for the new cause, greater than the enthusiasm of many religious teachers for their faith, impells them to follow the methods of the Salvation Army and to make known the faith that is in them wherever half a dozen passers-by will halt under the glow of a street-lamp. Halls are used for public meetings whenever and wherever the funds of a local organization of the Socialist Labor party will admit of such luxury. Where funds are not available, meetings are held at street corners, in the public squares, in the market places or in the parks. Every week, summer or winter, some two thousand five hundred of these meetings are held.[1] They are so numer-

[1] Interview with Keir Hardie. *Globe*, Toronto, July 22, 1907.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

ous that reporters are complaining of the new burden which the propaganda is throwing upon them;[1] for with thirty-one Socialist Labor members in the House of Commons it has ceased to be practicable for the newspapers to ignore the local meetings of the party that has returned these members to Parliament.

Among the adherents of both the older parties there was an expectation, perhaps a hope, that there would be an easing-down in the Socialist Labor propaganda after the success that the movement had achieved at the general election. The propaganda, however, went on as before. One description of the methods by which it is pushed will serve to illustrate the activities of the party in the larger cities, where members are numerous, where organization is good, where funds are available for the hire of halls, where speakers of more than local fame can be secured and large audiences can be assured to them. The description quoted is of the activities of the party in Edinburgh, and is taken from the news columns of the *Glasgow Herald*, which is editorially as much opposed to the new movement as is the Liberty and Property Defence League or the Primrose League.

Under the auspices of the Independent Labor party most of the large Sunday meetings are promoted, at which the speakers are prominent social reformers. On a recent Sunday the Right Hon. Sir John Gorst delivered an address to a large gathering. The syllabus of lectures and debates prepared for this winter session provides a somewhat solid feast of reason for the members of the branch. At the end of this month Mr. Victor Grayson, M. P., will speak on the Destiny of the Mob; while Messrs. J. A. Seddon, J. Ramsay Macdonald, Pete Curran, Geo. H. Roberts, Philip Snowden and F. W. Jowett, all members of Parliament, and two Edinburgh clergymen (Congregational and Church of Scotland) are also numbered among the lecturers. A prospect is held out that an arrangement may also be made with the Rev. R. J. Campbell for an address. At the more important meetings a variety is given to the proceedings by the new Edinburgh Clarion Choir, which meets weekly for the practice of Socialist melodies. Another feature of the propaganda in the capital is the Socialist and

[1] *Newspaper Owner*, October 12, 1907.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Ethical Sunday School, conducted weekly in the Central Rooms in the Lawnmarket, where the catechism taught is not that of the Westminster divines.[1]

There was no halt to the activities of the Socialist Labor party after the general election. Its exertions, however, attracted less public attention than in the winter months of 1905–06, when all the political parties were lining up for the great struggle in the constituencies. Consequently the Liberal party, in and out of Parliament, experienced a shock when, at the end of the summer of 1906, it was realized that the Socialist Labor group, as part of its propaganda and with the view also of adding to its parliamentary strength, had persisted in nominating a candidate at Cockermouth, and had thereby thrown the seat long held by Wilfrid Lawson into the possession of the Conservatives.

The Master of Elibank, comptroller of the king's household and one of the Scotch Liberal whips in the House of Commons, was the first member of the Campbell-Bannerman ministry to express his alarm at the impending danger to the Liberal party. In a speech at West Linton, a few days after the defeat of the government candidate at Cockermouth, he said:

Liberalism never thrived upon socialism. Liberals did not believe in the public ownership of the means of production, nor that necessarily capital and labour were antagonistic. They did not believe that it was the right of every man to obtain labour from the state, or that it was the duty of the state to give labour where there was not a demand for it. He knew that, as Scottish whip, he spoke with a certain authority attaching to that position. But as one coming in contact daily with stern and strong workers in the Liberal party of the working classes and of the rank and file of the Liberal party in the House of Commons, he was conscious that there was a growing feeling, which had been accentuated by the Cockermouth election, that unless the Liberal party stood upon its own legs its very vitals would be consumed. It would fall between two stools, and disappear as an active force in British politics.[2]

There were many replies from the Socialist Labor party to

[1] *Glasgow Herald*, October 15, 1907. [2] *Tribune*, London, August 27, 1906.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

these utterances of the Master of Elibank. One from each of the two Socialist newspapers may be taken as indicating their nature. In the *Labour Leader* Keir Hardie, then parliamentary chairman of the group, wrote:

It is to the Cockermouth election that we owe this enlightening burst of frankness. The Scottish Liberal whip is not the only member of the party who is thinking these things; others who think them, and feel them quite as strongly as he, are too discreet to give them tongue in the presence of reporters. In the very nature of things this feeling is bound to grow. Cockermouth is but the first of long series of contests in which Labour will be in conflict with both Liberals and Conservatives. Labour must go on fighting for its own hand, careless of whether its enemy wear one or two heads. For all who oppose Labour candidates are the enemies of Labour, whether they are known as Liberal or as Conservative.[1]

F. W. Jowett, another member of the parliamentary group, wrote in the *Clarion*:

If there had been no Labour candidate at Cockermouth, it would have been merely a society struggle. And even had there been more in the nature of political differences between the orthodox rival candidates than there actually was, we must increase our numbers. We have no intention of remaining a party of thirty if we can help it. Consequently we must fight by-elections.[2]

The Conservative counter-propaganda

For several months the Conservative party regarded these acute differences between the government and the Socialist Labor party with satisfaction. They would have welcomed an endless series of Cockermouths had it resulted in the handing over to them of what had long been regarded as Liberal seats. But when, as at Jarrow and in the Colne Valley, the Socialist candidates carried elections against both Conservative and Liberal candidates, and when after Kirkdale it began to be realized that men who had formerly voted with the Conservatives were voting for Socialist Labor candidates, the Conservatives in their turn became alarmed. Numerous organizations directly or

[1] *Labour Leader*, August 31, 1906. [2] *Clarion*, August 31, 1906.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

indirectly concerned in the upholding of Tory principles now bestirred themselves to set on foot a counter-propaganda.

The Primrose League, founded in 1883 by Churchill, Wolff and Gorst on the model of the Orange Society, to infuse new life into the Tory party in the constituencies and to form "a new political society, which should embrace all classes and all creeds except atheists and enemies of the British nation,"[1] was first in the field and raised a special fund for a propaganda against socialism. Its speakers were sent out to preach that "the methods of socialism are fraught with inexpressible danger to religion and to civilization itself," and "to show the elector the falsity of the tirades which the socialist and the political agitator are preaching."[2] The Liberty and Property Defence League, founded twenty-five years ago, next pushed into the field. It was prepared to send its lecturers anywhere in the kingdom to prove "that socialism is economically fallacious, politically mischievous and morally unsound."[3] As one outcome of this activity, two hundred delegates from local associations with kindred aims to those of the Liberty and Property Defence League assembled in conference in October, at Caxton Hall, Westminster, on methods to be adopted to stay the socialist movement.

After the Caxton Hall conference, the National Union of Constitutional and Conservative Associations became so deeply impressed with the new danger to Toryism and to society in general that in mid-December, when English winter weather is at its worst, it started four itinerant vans on a tour of England and Wales. Speakers charged with the duty of combating socialism at the cross-roads or on the village greens, or anywhere in rural England where they could find a pull-up for their vans and an audience willing to listen to them, traveled and lodged in these vans. The vans were sent out in response to the hurry call after Jarrow and the general alarm after Colne Valley and Kirkdale. This campaign, in which the Conservatives adopted methods of propaganda first employed by the

[1] Winston Spencer Churchill, Lord Randolph Churchill, I, 256.

[2] *Yorkshire Post*, July 25, 1907. [3] *Ibid.*, July 27, 1907.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

land-law reformers in the early eighties, when Chamberlain and Jesse Collings were still of the advanced wing of the Radical party, was continued all through the winter months of 1907–08. Rain or snow, the vans pushed on from village to village, and audiences were found or made for the National Union lecturers. By March 7, 1908, it was reported from headquarters in London that the vans had traveled 13,600 miles; that 8160 villages and hamlets had been visited; that missionary work by the lecturers, and by means of megaphone messages from Balfour and other Tory leaders, had been done in 2785 villages; and that 760,000 people had attended the meetings.[1]

Every Conservative member of Parliament who addressed his constituents in the 1907–08 recess felt it incumbent on him to take his part in the counter-movement against socialism. So did numerous members of the House of Lords; and so did many Liberal members, including men in the front rank of the party, such as Asquith and Haldane. In the winter of 1907–08 the pros and cons of socialism were more continuously and persistently discussed in public and in private than any other political subject. The controversy over the House of Lords was quite submerged in the new and widespread interest in socialism. The education controversy was similarly eclipsed; and it was not until April 17, 1908, when Asquith introduced his bill for reforming the licensing laws, that ordinary political questions regained possession of the public mind.

It is necessary to go back to the period that lies between the French Revolution and the defeat of Napoleon at Waterloo to recall an era in English political history that compares with the exciting winter of 1907–08. In the early days of that reactionary period, people in England were divided into two distinct schools of political thought. In one were the advocates of parliamentary reform—those who were not shocked beyond the reasoning point by the French Revolution. In the other were those who supported the Tory government, who viewed the Revolution with inexpressible horror, and who regarded the advocates of reform much as they regarded Robespierre and

[1] *Daily Mail*, Manchester, March 14, 1908.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Marat. At that time the advocates of reform were denounced, like the socialists of to-day, as levelers and atheists. Much bitterness was infused into the attack on the socialists, in the winter of 1907–08, by such denunciations—by accusations that they were atheists and were bent on the uprooting and destruction of the family. This attack was pushed so far and so relentlessly that in January, 1908, one hundred clergymen of the established and free churches, who are organized in the Christian Socialist movement, published a manifesto, in which they said:

We declare that the Socialism we believe in, sometimes called Christian Socialism, involves the public ownership and management of the means of production, distribution and exchange, and is therefore essentially the same Socialism as that which is held by Socialists throughout the world. Our Socialism is not less earnest nor less complete because it is inspired by Christianity. The central teaching of Socialism is a matter of economics, and may therefore be advocated by all men, whether they be Christians or unbelievers; yet we feel, as ministers of the Christian faith, that this economic doctrine is in perfect harmony with our faith, and we believe that its advocacy is sanctioned and indeed required of us by the implications of our religion.[1]

At the end of the winter campaign the Socialist Labor party, like the National Union of Conservative Associations, published its estimate of the season's work. It claimed gains not only from its own propaganda but from the counter-propaganda.

The Tory party has constituted itself the champion against Socialism. The Liberal party, though not officially taking part in the campaign, and although many Liberal politicians and newspapers have either held entirely aloof or expressly dissociated themselves from it, has nevertheless in parliamentary contests and in local politics joined bitterly and unscrupulously in the attack upon Socialism. All of this has been a great gain to our cause, and made the year memorable in the history of British Socialism.[2]

[1] *Daily News*, January 20, 1908.

[2] Report submitted to the conference of the Independent Labor party, at Hudders field, in April.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Labor legislation

The more important legislative successes of the labor movement came in the session of 1906. In that session the Socialist Labor group impelled the government to accept the principle of a bill introduced by one of its members for safeguarding trade-union funds from judgments in the law courts like that in the Taff Vale case, which mulcted the Amalgamated Society of Railway Servants in heavy damages arising out of a strike on one of the railways in South Wales. Bills dealing with this subject were before the House of Commons of 1900–06. One was introduced in 1903; and in 1905 the second reading of such a bill was carried by a majority of 122. This measure, however, failed of final passage in the House of Commons for lack of time; and at the general election of 1906 trade-unionists all over the country sought pledges from candidates that they would support a bill amending the law as it had been laid down in the Taff Vale case.

The Campbell–Bannerman government was pledged to legislation to safeguard trade-union funds; and on March 28, 1906, Lawson Walton, the attorney-general, introduced a Trades Dispute bill of three clauses. The first two clauses defined and limited conspiracy and legalized peaceful picketing; the third clause provided that funds of trade unions could not be made liable for damages by reason of any action of a trade-union official, unless the action could be proved to have been authorized by the central body of the trade union.

On this last clause the Labor members promptly took issue with the government. Their position was that it had been the intention of Parliament, when it passed the Trade Union Act of 1871, absolutely to safeguard trade-union funds; that for thirty years it had been universally supposed that the funds were so safeguarded; that no one had suffered during that period from this supposed immunity; and that the legislation which the trade unions demanded would merely restore them to the position conceded to them before the House of Lords decision in the Taff Vale case. These objections were raised on the first reading of the attorney-general's bill; and before

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

that measure came up for second reading—the stage at which the principle of a bill is accepted or rejected—the House was called upon to vote on a bill introduced by William Hudson, Socialist Labor member for Newcastle-on-Tyne, which was also intended to safeguard trade-union funds. Hudson's bill went much further than the government bill. It gave to trade-union funds absolute immunity from any such liability as was asserted in the Taff Vale decision. The second reading of this bill was carried by a majority of 350, and the government had no option but to substitute the clause in the Hudson bill for the third clause in the attorney-general's bill.

In this form the bill went to the House of Lords. It had been strenuously opposed by the Conservatives in the House of Commons and vigorously denounced by the Conservative press. This opposition, which was by no means confined to the Conservative party, aroused an expectation that the House of Lords would assert itself and summarily reject the bill. It was December, 1906, before it came up for second reading in the Lords. Halsbury, who was lord chancellor in the Conservative administrations from 1895 to 1906, and who is one of the few surviving Tories of the Eldon school, characterized the trade-union funds protection clause as "the most disgraceful section that had ever appeared in an English statute" and denounced it as "absolutely contrary to the whole spirit of the English constitution." But the Conservative leaders did not regard it as good tactics, in the then impending controversy between the Liberal House of Commons and the Tory House of Lords, that the Lords should throw out the bill and thus become involved in a contest with the democracy in the constituencies. Landsdowne, the opposition leader in the Lords, accordingly announced that while the Conservatives disclaimed all responsibility for the bill they would not oppose its enactment. So the bill went on the statute book, where it stands as the greatest and most direct parliamentary achievement of the Labor movement in British politics—an act with a House of Commons history that will serve for years as a justification for the Independent Labor movement.

In the same session of Parliament there was passed an amending act to the Compensation to Workmen Act of 1897

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

(Chamberlain's act), which, it will be remembered, is based on the principle that the casualties of industry must be charges upon the industries in which they occur. The amending act brought clerks, shop assistants, seamen, postmen and domestic servants within the provisions of the law. It also removed some difficulties and anomalies which had been disclosed in the nine years' working of the original act.

Another measure which the Labor men in the House strongly supported was the Educational (Provision of Meals) Act. This is not a mandatory but a permissive act. Under its provisions a local educational authority, which is convinced that there are children attending the schools under its care who are in need of food and that voluntary effort to supply this need is insufficient, may provide meals and may lay a rate not exceeding one halfpenny in the pound on the assessed rental value of the property in the area subject to its jurisdiction.

In the same session (1906) one of the members of the Socialist Labor group introduced an amendment to the Aliens Act of 1905, to make it unlawful to import men to take the places of men who were out on strike. This measure was passed by the House of Commons only to be rejected when it came up for second reading in the House of Lords. In the session of 1907 Parliament passed an act bringing laundries within the scope of those of the Factory Acts which regulate the work of women and children. This was the only labor law adopted in 1907.

The enactments above summarized include most of the labor and social legislation which, up to the incoming of the Asquith government in May, 1908, had been enacted by the Parliament elected in 1906. But no adequate idea of the parliamentary activity of the Socialist Labor group is possible without some brief statement of the directions in which they have sought to push legislation, as shown by bills introduced by members of the group which were either defeated at second reading or failed to get even so far in their progress through the House of Commons.

In the session of 1906 William Crooks, a cooper by trade, introduced a bill providing that members of Parliament should

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

travel free on the railways when journeying to or from their homes or their constituencies and Westminster. Jowett introduced a bill to prohibit manufacturing in woollen, worsted and silk factories between noon on Saturday and six o'clock on Monday morning. The industries were thus defined because in the factory code there is already a law which prohibits women and children from working in cotton factories after noon on Saturdays. The proportion of women and children in these factories is so large that this law guarantees the stoppage of all work in the cotton factories at noon. In the other textile mills the proportion of women and children is much smaller—so much smaller that work can be continued after noon on Saturdays, after the women and children in these mills may have ceased work. Jowett's bill was defeated on the second reading. In the same session William C. Steadman, who is of the Liberal Labor group or, as it is sometimes called, "the Old Guard," introduced a bill for the establishment of fair-rent courts for working-class tenants; and in the session of 1908 Richard Bell, of the Amalgamated Society of Railway Servants, also of the Liberal group, introduced a bill making it compulsory on employers to furnish a reference note to any person leaving their employ and requesting such a note.

The measure on which the Socialist group concentrated its energies in the session of 1908 was the "Right to Work" bill, which was introduced by W. T. Wilson, carpenter, who sits for the West Houghton division of Lancashire. This bill provided for the registration of unemployed labor and for the establishment, by order in council, of a central unemployment committee. It proposed to impose on municipal authorities the obligation to find work for every registered unemployed person within their areas or, in the alternative, to provide maintenance for the workmen and those dependent upon him, without disfranchising him. It was also proposed to confer power on local authorities to detain for a period of six months any unemployed person who refused to work.

Wilson was fortunate in the ballot for days for private members' bills. His measure came up for second reading on March 13. An urgent whip against the bill was sent to all the govern-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

ment's regular supporters; and after a long discussion, in which there were some tart interchanges between John Burns and members of the Socialist Labor group, the motion for second reading was rejected by 265 votes to 116. Thirty Liberal members, including Masterman, who is now of the Asquith ministry, voted with the Labor men; so did such of the Irish Nationalists as were present, and also two members of the Conservative opposition.

Other results

To complete this survey of the parliamentary work and position of the Labor party, it only remains to add that, as the result of the general strength of the Labor movement in the House of Commons as represented by the three distinct groups of labor representatives, there have been many concessions to labor by the various government departments. Trade-union representatives of the postal and telegraph clerks were recognized by Buxton, the postmaster-general. Seamen and sea-going firemen have obtained the right to be represented before the local marine boards by the officials of their unions when charges of breach of discipline are preferred by captains against members of their crews. This concession was made by Lloyd George, when he was president of the Board of Trade. An eight-hours working day was established in the Admiralty dock yards in June, 1906; in December, 1906, wages in these establishments were increased; and, also in 1906, the wages of gardeners in the several parks in London and the vicinity that are under the control of the commissioner of public works were increased by three shillings a week. During the two years and four months over which the Campbell-Bannerman administration extended, an unusual number of royal commissions and select committees were appointed to investigate industrial and social conditions, and early in the session of 1906 the Socialist Labor group established its claim to representation in the make-up of these commissions and committees.

What the Socialist Labor party itself claims for its activity in and out of Parliament between the general election of 1906 and the beginning of the session of 1908 was set forth by Ramsay

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Macdonald, its parliamentary secretary, on the eve of the new session.

The fact that progress has been made all around indicates why the party has existed at all. It has quickened the intelligence and the sense of self-respect amongst the wage earners of the country. It has been of inestimable value to the morale of the masses that a body of men, every one of whom sprung from the cottage and the industrial home, have been in the House of Commons for the past two years, and gaining by their practical capacity and native ability a conspicuous place in an assembly where, it had been assumed, only "the classes" could shine. The common man has been taught to hold up his head, and has been led to believe in that most valuable of all forms of self-help—self-help in the making of laws. Whilst Radicals have been talking of the forms of democracy, the Labour party has been awakening the spirit of democracy, with the result that democratic thought and democratic organisations have received new vitality.[1]

A look forward

As to the future of the party, my own conviction is that it will continue to gain in strength in the constituencies and in the House of Commons. At the end of the session of 1907, Liberal newspapers, while conceding that the party was "a real asset in the business of government," that "its influence in the House of Commons was towards purity and simplicity," that it included "individuals of repute and force" and that at least three of its members—Macdonald, Shackleton and Barnes—"might quite properly be included in a cabinet of advanced politicians," objected that the Socialist Labor party could not form a government—"that it could not sustain the foreign or domestic policy of the country."[2] Such a result is not within the contemplation of its middle-class supporters. The tens of thousands of electors who before 1906 voted with the Liberals and the thousands of electors who voted with the Conservatives, and who are to-day in sympathy with the Socialist Labor party, have no expectation that in the near future the group will be called upon to form an administration. They have no desire that its full

[1] *Daily News*, January 20, 1908. [2] *Nation*, London, November 30, 1907.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

program shall be realized—that the state shall possess itself of the means of production, distribution and exchange. But they realize that there is much to be achieved short of the full program of the Socialists. To-day they are satisfied to give their support to the Socialist Labor party because it stands for some ideals of social justice and social betterment; because it is working towards these ideals; and moreover, and in particular, because in season and out of season the Socialist Labor party keeps the "condition of England question" to the front in the public mind.

The old "governing classes" theory, dominant between the Revolution of 1688 and the middle of Queen Victoria's reign—the theory that millions of electors are to march to the polls every five or six years merely to assist this or that group of the governing classes to form an administration and divide the ministerial offices—is nowadays losing its hold on the public mind. Opposition to the old theory became increasingly strong after the Reform Act of 1885; and it must increase in strength as the level of popular intelligence rises, and as nineteenth-century history and biography—especially political letters and biographies—are more widely read and more critically estimated.

Contemporaneously with the gradual relegation into the background of the theory of rule by the governing classes, it has been increasingly realized that, in the absence of any constantly impelling popular forces and movements, there is at bottom not much difference in the political aims and ideals of the Conservatives, of the Whigs, and of those orthodox Liberals who are scarcely distinguishable from Whigs. The difference is particularly small in the case of those wealthy Liberals of the mine-owning, ship-owning, manufacturing and commercial classes who are intent on social and territorial as well as political ambitions, who are anxious to "gentle their condition," and who put social ambition—a baronetcy or a peerage—as the goal of their political activities. All this has been brought home to the minds of the younger members of the Liberal party in the constituencies, especially in the great industrial constituencies, by the excessive creation of peers—twenty-eight in all—since the Liberals came into office, at the end of 1905. It has been

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

brought home to them also by the artificiality and hollowness of the recent worse than abortive movement of the front-bench Liberals against the House of Lords; and again by the lack of courage and of persistence shown by the Liberal ministry in dealing with the education question. In the space of two years three Liberal cabinet ministers have tried their hand at a settlement of this question; and two of them have dropped a worse than half-completed task, with attendant loss of heart and demoralization for the rank and file of the party, when promotion in cabinet rank came within their reach.

Between the American Revolution and 1832, it was the custom of the House of Commons, at wide intervals, after bad harvests or during a period of industrial depression, to go into committee of the whole to consider the state of the nation—to discuss the condition of England. Today that question, presented in an infinitely more comprehensive form and viewed from a totally different standpoint, is being discussed outside Parliament with a persistence and continuousness without precedent in England's history. It is in the atmosphere of English life. It is not discussed on party lines; and its discussion tends increasingly to the dissolution of the cement which has in the past served to hold people to the one or the other of the old-line political parties. So long as this discussion of the condition of England goes on, and so long as the question continues to be faced in the spirit of this new awakening of the social conscience, any party in the House of Commons which can be made to serve as a propelling force behind either the Tory or the Liberal party must continue to gain strength in the constituencies and to increase its admitted and obvious national usefulness at Westminster.

EDWARD PORRITT.

HARTFORD, CONNECTICUT.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

THE LEX CURIATA

TO understand the Roman *lex curiata* it is necessary to take into consideration the powers and functions of the Curiate Assembly in the period of its political importance. The assumption has commonly been made that from the beginning the Roman people, and therefore the *comitia*, were sovereign. This view rests in part, however, on a confusion of two ideas which should be kept distinct. In its broadest sense *populus* designates the state, which is sovereign whether it expresses its will through the king, the Senate, or the popular Assembly. In international relations it has always this meaning. More narrowly, it signifies the mass of citizens in contrast with the magistrates or with the Senate. In the latter sense it cannot be said that the *populus* was from the beginning sovereign. The Romans of later time understood that in the regal period the Senate had the wisdom to advise, the king possessed the *imperium*, whereas the people enjoyed but a limited degree of freedom, right and power.[1] Their condition was not liberty but a preparation for it.[2]

With reference to the specific functions of the Assembly, Dionysius[3] states that Romulus granted to the commons three rights: (1) to elect magistrates, (2) to ratify laws, (3) to decide concerning war, whenever the king should refer the matter to them. Livy's[4] stricture on the absolutism of Tarquin the Proud implies, too, that constitutionally the Assembly had power to decide on peace and war. But stress should be laid on the admission of Dionysius that probably all the questions above enumerated, or at least those of peace and war, were referred to the Assembly at the pleasure only of the king—that the decision of them was not a right of the people but a concession on the part of the sovereign. Still more important, these generali-

[1] Cicero, De Republica, 28, 50; *cf.* 23, 43.

[2] Livy i, 46, 3; 60, 3; ii, 1, 6 *et seq.*; 15, 3.

[3] II, 14, 3. [4] I, 49, 7.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

zations are in great part invalidated, as Rubino[1] has shown, by the testimony of their authors. Till the year 427 B. C. the Senate claimed the right to declare an aggressive war,[2] and for a hundred years longer the magistrates alone or in conjunction with the Senate were competent to conclude treaties of peace.[3]

With reference to the legislative activity of the Assembly under the kings, it is necessary to call attention to the fact that among all peoples in the earlier stages of their growth law is chiefly customary.[4] At the time of her founding, Rome inherited from the Latin stock, to which her people mainly belonged, a mass of private and public customs, which, owing their existence to no legislative power, were the result of gradual evolution. Under such conditions the king or chief settled disputes in accordance with these usages, though in the general belief his individual judgments came directly to him from some god. The Homeric king received his dooms—θέμιστες—and even his thoughts from the gods.[5] The mythical or semi-mythical legislators of Greece, as Minos, Lycurgus and Zaleucus, were given their laws by revelation. In like manner Numa, who may be considered a typical legislator for primitive Rome,[6] received his sacred laws and institutions from the goddess Egeria;[7] and Romulus, the first great law-giver,[8] was a demi-god, who passed without dying to the dwelling-place of the immortals.[9] Roughly distinguished, Romulus was the au-

[1] Römische Verfassung und Geschichte, pp. 257 *et seq.*

[2] Livy iv, 30, 15.

[3] *Cf.* Livy's account (ix, 5–10) of the treaty of Caudium in 321 B. C. The subject is discussed at greater length in my Roman Assemblies, to be published in the near future.

[4] For the Indo-Europeans, see Schrader, Reallexikon der indogermanischen Altertumskunde (1901), p. 655; Maine, Ancient Law, pp. xv, 2; Hirt, Indogermanen, II, p. 522. There was doubtless occasional legislation by the Assembly in its earliest history; *cf.* the prohibition of the importation of wine by the Suevi (Caesar, De Bello Gallico, iv, 2), which may have been an act of the kind.

[5] Iliad i, 238; ix, 98; Odyssey vi, 12.

[6] Cicero, Rep. v, 2, 3; Livy i, 19, 1.

[7] Livy i, 19, 5; *cf.* 42, 4; Tacitus, Annals, iii, 26.

[8] Livy i, 8, 1; Vergil, Aeneid, i, 292.

[9] Cicero, Rep. ii, 10, 17; Livy i, 16.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

thor of the secular law, Numa of the sacred.[1] In general the Romans of later time looked back to their kings, the founders of their state,[2] as the authors not only of their fundamental laws and institutions but even of their moral principles.[3] Doubtless the Roman view of the ancient king is an image of the republican dictatorship, of the extraordinary *magistratus rei publicae constituendae*, of the consul freed from his various limitations;[4] but the picture, stripped of the distinctness which came with the gradual formulation of constitutional usage, is, as comparative study shows,[5] true to the primitive condition which it aims to represent.

From this early conception the idea of human legislation gradually emerged. Not daring on his own responsibility to change a traditional usage which the people held sacred, the magistrate found it expedient to obtain their consent to any serious departure, with a view not to legalizing the proposal, but to pledging the people to its practical adoption. But to the end of the regal period the legislative activity of the *comitia* remained narrowly restricted. The body of *leges regiae*, described as curiate by Pomponius[6] on the supposition that they were passed by the assembly under royal presidency,[7] was little more than the *ius pontificum*—the customary religious law—with whose making the *curiae* had nothing to do.[8] If the king wished to admit new citizens,[9] erect public works, levy forced

[1] On the legislation of the kings, see Voigt, in Abhandlungen der königlich sächsischen Gesellschaft der Wissenschaften, VII (1879), pp. 555–826.

[2] Livy ii, 1, 1. [3] Cicero, Rep. i, 2, 2.

[4] Mommsen, Römisches Staatsrecht, II, p. 11.

[5] See my Roman Assemblies, mentioned on p. 499, n. 3, *supra*.

[6] Justinian, Digesta, i, 2, 2, 2.

[7] Ascribed to Ancus Marcius by Livy (i, 32, 2) and Dionysius (iii, 36, 2 *et seq.*), to Romulus and his successors by Pomponius (Dig. *loc. cit.*), and destroyed in the Gallic conflagration (Livy vi, 1, 1).

[8] Lange, Römische Altertumer, I, p. 314; Voigt, in Abhdl. d. sächs. Gesellsch. d. Wiss. VII, p. 559.

[9] The sources uniformly represent the kings as acting alone in the admission of individuals and of entire communities to citizenship. The view of Mommsen, Röm. Staatsr. III, p. 29, that the Assembly coöperated, rests merely upon his theory of an original popular sovereignty and of an original patrician state, neither of which has any basis in fact.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

labor on the people,[1] reform the military organization,[2] punish a man with chains and death,[3] make a treaty, or even declare an offensive war, no power compelled him to submit the measure to the citizens. Although he must often have found it expedient to engage their coöperation in national enterprises, or, more rarely, in a legal innovation,[4] it may be stated with confidence that before the beginning of the republic the Curiate Assembly had not acquired the right to be consulted on any of these matters, that its slight activity in legislation and administration was a concession from the king rather than a right; for under the republic such activity, gradually increasing, belonged to the centuries and the tribes. We may accept without hesitation the principle that in form if not in substance the *curiae* retained all the powers which they had ever actually possessed.

Judicial business, which no one assumes to have been a primitive function of the Roman Assembly, needs no long consideration here. Among the early Indo-Europeans the settlement of disputes and the punishment of most crimes were in the hands of the families and brotherhoods; only treason and closely related offences were tried by the king in the presence of the Assembly.[5] The religious ideas attaching to crime and punishment[6] in early Rome suggest that the priests had the same connection with these matters there as among the Celts and Germans. That condition yielded to the growing authority of the king, who is represented by the ancients as wielding an absolute power of life and death over his people, and as allow-

[1] Cicero, Rep. v, 2, 3; Livy i, 38, 7; 56, 1 *et seq.*

[2] Livy i, 43.

[3] Livy i, 44, 1; *cf.* especially the summary condemnation and execution of Mettius; *ibid.*, i, 28. Livy's complaint (i, 49, 4) against Tarquin the Proud is that he decided capital cases without assessors, not that he allowed no appeal.

[4] Lange's view (Röm. Alt. I, p. 314) that under the kings there was absolutely no legislation, except the passing of the *lex de imperio*, cannot be proved and seems unlikely. Mommsen's hypothesis (Röm. Staatsr. III, p. 327) that under the kings the *comitia* were exclusively legislative, elections and judicial functions being a republican innovation, is contrary to all evidence. There is no reason for supposing that the republic brought to the comitia any absolutely new function.

[5] Schrader, Reallexikon, p. 662.

[6] Greenidge, Legal Procedure of Cicero's Time, p. 298.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

ing in capital cases an appeal to the Assembly at his discretion.[1] From the general conception of the relation between king and Assembly thus far indicated, it is necessary to conclude that if the people had any claim to a share in the jurisdiction it must have been slight as well as vague, and one which they were in no position to enforce.

A review of the individual kings might give the impression that an act of the Assembly was unessential to filling the regal office. Not only were Romulus and Tatius kings without election,[2] but, according to Livy,[3] Numa's appointment was made by the Senate alone, and Servius Tullius ruled long and introduced his great reforms before his election.[4] Tarquin the Proud to the end of his reign was neither appointed by the Senate nor chosen by the people.[5] From these four or five instances of kings who ruled without election, as well as from the fact that both the dictatorship—a temporary return to monarchy—and the office of *rex sacrorum*—the priestly successor to the monarch—were filled by appointment, we might infer that the kingship was not elective.[6] But on the other hand the word *interregnum*, which could not have been invented in the republican period, and which involves the idea of election, as well as the general custom of choosing kings among primitive European peoples, may be added to the authority of the sources[7] in favor of an elective monarchy in earliest Rome. The nomination of the king by the competent authority was perhaps acclaimed in a *contio*, as among the early Germans. Such an election, we may suppose, was in the beginning legal without further action on the part of the people. But the accession of a king was a momentous event in the life

[1] *Cf.* Livy i, 26, 8 *et seq.*; Cicero, Pro Milone, 3, 7; Greenidge, *op. cit.*, pp. 8, 305 *et seq.*

[2] Cicero, Rep. ii, 2, 4; 7, 13; Livy i, 13, 4.

[3] I, 17, 11. Cicero (Rep. ii, 13, 25), however, supposes him to have been elected by the people.

[4] Cicero, Rep. ii, 21, 37; Livy i, 41–6; Dionysius iv, 8.

[5] Livy i, 49, 3.

[6] *Cf.* Mommsen, Röm. Staatsr. II, p. 6.

[7] *Cf.* Cicero, Rep. ii, 13, 25; 17, 31; 18, 33; 20, 35; Livy i, 17, 10; 32, 1; 35, 1; 35, 6; 46, 1; Jordan, Könige im alten Italien, pp. 25 *et seq.*

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

of a generation—far more important than the annual declaration of war upon a neighbor—and the advantage of a formal vote of the Curiate Assembly, after its institution, was obvious both to the king and to the *sacerdotes;* it gave to the former the solemn oral pledge of obedience from the citizens, and to the latter an opportunity to influence the proceedings through the auspices and through the manipulation of the calendar.

Under this system the king, after his appointment by his predecessor or by the *interrex* and after the acclamation in *contio*, if such action took place, convoked the *curiae* on the first convenient comitial day of his reign, having held favorable auspices in the morning, and proposed to them a *rogatio*[1] to the following effect: "Do you consent, and regard it as just and legal, that I as king should exercise *imperium* over you?" This *rogatio*, answered affirmatively by a majority of the *curiae*, became a *lex curiata de imperio*.[2] The informal acclamation, if it was ever customary, must have disappeared at a very early period, and the passing of the curiate law was then looked upon as the election proper.[3]

[1] Cicero, Rep. ii, 13, 25 (Numa); 17, 31 (Tullus Hostilius); 18, 33 (Ancus Marcius); 20, 35 (Tarquinius Priscus).

[2] The formula for the curiate law is unknown. Lange, Röm. Alt. I, pp. 307, 407, 459, 461, supposes that it not only pledged the people to obedience, but also defined the *imperium* and bound the king not to exceed the limitations imposed, and that every constitutional modification of the *imperium* required a corresponding change in the curiate act. Herzog, Geschichte und System der römischen Staatsverfassung, I, p. 111, further assumes that the law contained the formula of treaty on which, in his opinion, the state rested, and that before the age of written documents this treaty was handed down orally through the repetition of the law. Lange's theory, which runs throughout his great work, seems to rest on the single statement of Tacitus, Ann. xi, 22: "Quaestores regibus etiam tum imperantibus instituti sunt, quod lex curiata ostendit a L. Bruto repetita." But the statement of Tacitus proves only that the quaestors were mentioned in the curiate law—a circumstance which is more simply explained below, p. 507. That the law defined and limited the *imperium* is unlikely: (1) because in early times, when the act had a real meaning, precise definitions were unknown; (2) because there is no evidence of it.

[3] It is true that Cicero supposes the king to have been elected by the *comitia curiata* and the *imperium* to have been sanctioned by the same assembly. This double vote of the *curiae* seems as improbable as unnecessary. We may reasonably consider the alleged first vote a mistaken inference from the later election of higher magistrates by the centuries. The assumption of an acclamation as the first stage in the process accords far better with primitive conditions.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Concessions to the people develop into popular rights. The citizens, deeply interested in the choice of a man who for the remainder of his life was to represent their community before the gods, lead them in war and exercise over them the power of life and death, claimed as their first active political right the *ius suffragii* in the enactment of the *lex curiata de imperio*. Hence after the institution of the republic and of the *comitia centuriata*, the *curiae* clung obstinately to this inalienable prerogative.

The development of the elective process outlined above is offered in explanation of the curious phenomenon that under the republic, while no other acts of the Centuriate or of the Tribal Assembly required confirmation by the *curiae*, elections in these assemblies did require such sanction. This explanation is the only one proposed which harmonizes with the Roman interpretation of the peculiarity. According to Cicero it was provided that in the case of all elective magistrates the people should vote twice on each, that they might have an opportunity to correct what they had done, if they repented of having conferred an office on any person. In the case of the censors this second vote was cast in the *comitia centuriata;* all other elective magistrates received it in the Curiate Assembly.[1] Rubino[2] and others have objected that Cicero's interpretation of the curiate law is biassed by his desire to contrast the essentially anti-popular character of the demagogue Rullus, who by the terms of his agrarian law would deprive the people of their right to vote even once in the election of officials, with the wisdom and moderation of the ancient statesmen, who were so devoted to the people as to allow them two opportunities to express their choice in the case of each magistrate. The orator, it is urged, could not himself know the original intention of the usage; and his interpretation is contradicted by the fact that the person

[1] Cicero, De Lege Agraria, ii, 11, 26: "Maiores de singulis magistratibus bis vos sententiam ferre voluerunt. Nam cum centuriata lex censoribus ferebatur, cum curiata ceteris patriciis magistratibus, tum iterum de eisdem iudicabatur, ut esset reprehendi potestas, si populum beneficii sui paeniteret." *Cf.* 10, 26.

[2] Röm. Verf. und Gesch. pp. 361, 379. For a summary of the various modern views, see Nissen, Beiträge zum römischen Staatsrecht, pp. 42–46.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

who proposed the *lex curiata* was already a magistrate, the voting on this *lex* being subsequent to the election and forming no part of it.[1]

In favor of Cicero it may be stated in the first place that he was not simply offering a conjecture as to the original intention of the usage, but was interpreting the formula of the law as it existed in his own day. There would be no point to his interpretation unless the formula ran somewhat like that of an election; and he affirms definitely that the law bestows the magistracy upon a person who has already received the same office from other *comitia*—that it is, in other words, a second bestowal of the office.[2] That this interpretation is not a mere invention of Cicero is proved by a statement of Messala[3] that the magistracy in the strict legal sense of the term is granted by the curiate law. And the point maintained by Messala is further confirmed by that article of the agrarian *rogatio* of Rullus which provides that the *decemviri agris adsignandis* may, if necessary, dispense with the curiate law and yet be "decemvirs in as legal a sense as are those who hold the office according to the strictest law."[4] In other words, the person who has been elected by the *comitia centuriata* or *tributa* is a *magistratus*, though not a *magistratus iustus* or *optuma lege*; a second election, by the *curiae*, is essential to the latter.[5]

[1] It is not probable that an official could pass the law for a colleague, the intention being that each higher magistrate should personally propose and carry the law for himself; *cf.* Mommsen, Röm. Staatsr. I, p. 610, n. 2.

[2] Leg. Agr. ii, 10, 26: "Hoc inauditum et plane novum, ut ei curiata lege magistratus detur, cui nullis comitiis ante sit datus."

[3] In Gellius xiii, 15, 4: "Magistratus . . . iustus curiata datur lege."

[4] In Cicero, Leg. Agr. ii, 11, 29: "Tum ii decemviri, inquit, eodem iure sint, quo qui optuma lege." See the following note.

[5] *Optuma lege* (*cf.* note above) sometimes denotes "with fullest power," as in Festus 198, 32; but in the article of the *rogatio* of Rullus above quoted it has reference to the formality of election and is so interpreted by Cicero. With him it is not a question of degree of power, as he has already stated (§ 28) that under the circumstances the decemvirs without the curiate law could do nothing at all: *idem iuris* (§ 29) signifies rather "degree of legality." *Magistratus optuma lege* is the same as *magistratus iustus; cf.* Messala, note 3, *supra*. In this connection *iustus* does not signify legal as opposed to illegal, but legally or technically perfect, correct. For the meaning "proper," "perfect," *cf.* Cicero, Ad Familiares, ii, 10, 3 (*iusta vic-*

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

The formula for the curiate law, in addition to its resemblance to that for elections, must have contained some reference to the *imperium*, as we may infer from its frequent designation as a *lex de imperio* by Cicero. From this phrase modern writers infer that the law conferred the *imperium* upon newly elected magistrates. The question whether it granted to a magistrate powers which he did not already possess will be considered below. For the present it is enough to state that in no instance do the ancients speak of "conferring" the *imperium* by the curiate law or of deriving the *imperium* from that law by any process whatsoever. But mention is made of conferring the *imperium* by a decree of the Senate or by the suffrages of the people in the Centuriate or Tribal Assembly and of *confirming* it by the *lex curiata*.[1]

toria); Caesar, B. G. i, 23 (*iustum iter*); Livy i, 4, 4 (*iusti cursum amnis*); xxxix, 2 (*iusto proelio*). Accordingly when Cicero (Post Reditum in Senatu ii, 11, 27) speaks of the *comitia centuriata* as the *iusta comitia*, he does not imply that the other *comitia* and their acts lack legality, but rather that they carry less weight; and when as late as 300 B. C. the patricians claimed that they alone had *iustum imperium et auspicium* (Livy x, 8, 9), they could only mean that their right to these powers was better established than that of the plebeians. C. Flaminius, consul in 217 B. C., possessed *imperium*, which he was actually exercising over his troops, but which was not *iustum*, for he had neglected the auspical formalities appropriate to the entrance upon the consulship (Livy xxii, 1, 5). It would be wrong, however, to suppose with Nissen, Beitr. z. röm. Staatsr. p. 51, that he commanded on the sufferance only of his soldiers.

[1] The usual expression is "de suo imperio curiatam legem tulit," or "populum consuluit"; Cicero, Rep. ii, 13, 25; 17, 31; 18, 33; 20, 35; 21, 38; Livy ix, 38, 15. The Senate granted the *imperium* to Octavianus, a private citizen; Cicero, Philippica, v, 16, 45. The *interrex*, who could not have had a curiate law, nevertheless possessed *imperium* (Livy i, 17, 5 *et seq.*), and the absolute *imperium* was granted by a decree of the Senate; Livy iii, 4, 9; Sallust, Catilina, 29; Historiae, i, 48, 22 (Dietsch). See also Cicero, De Legibus, iii, 3, 9: "Imperia, potestates, legationes, quom senatus creverit populusve iusserit, ex urbe exeunto"; Leg. Agr. ii, 7, 17: "Omnes potestates, imperia, curationes ab universo populo proficisci convenit" (reference cannot here be to the Curiate Assembly, which in this connection Cicero does not recognize as the people). For the Centuriate Assembly, see Livy xxvi, 18, 9: "Omnes non centuriae modo sed etiam homines P. Scipioni imperium esse in Hispania iusserunt"; 22, 15: "Centuriam vero iuniorum seniores consulere voluisse, quibus imperium suffragio mandarunt." For the tribal assembly, see T. Annius Luscus, Oratio adversus Ti. Gracchum, in Festus 314, 30: "Imperium quod plebes . . . dederat." Also from Cicero, Leg. Agr. ii, 11, 28: "Vidit . . . sine curiata lege decemviros potestatem habere non posse, quoniam per novem tribus essent con-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

The consuls and the praetor were elected by the centuries, and their *imperium* was sanctioned by the *curiae*. The dictator, too, was obliged to carry a curiate law.[1] But the quaestors, the curule aediles, and the other inferior patrician magistrates, after their election by the tribes, did not themselves convoke the *curiae* for sanctioning their election; the *lex* was proposed in their behalf by a higher magistrate.[2] As the origin of this custom we may suppose that the kings, and after them the higher magistrates of the early republic, used to ask the people for a pledge of loyalty not only to themselves, but also to their assistants, and that this custom continued even after these inferior officials had come to be elective magistrates. To functionaries who lacked the *imperium* the expression *lex de imperio* could not apply; *lex de potestate*, though not occurring in the extant sources, would be the appropriate phrase.

It has generally been assumed that the curiate law bestowed

stituti," we must infer that had these decemvirs been elected in the regular way, by the thirty-five tribes, they would have had the *potestas* without a curiate law. In § 29 he asserts that on the principle followed by Rullus, whom he is assailing, anyone could obtain the *imperium* or *potestas* without a vote of any *comitia*, for he does not consider the *comitia curiata* real *comitia*, seeing that they have degenerated into a mere form. From these passages it is clear that Cicero believed the *imperium* or *potestas* to be conferred by the centuries or tribes and merely confirmed by the *curiae*. Furthermore the phrase *nullis comitiis* in 11, 29: "Si hoc fieri potest, ut . . . quisquam nullis comitiis imperium aut potestatem adsequi posset," *etc.*, implies that one may obtain the *imperium* or *potestas* in more than one form of *comitia*—either the *centuriata* or the *tributa*. This conclusion accords with the fact that the Tribal Assembly had power to abrogate the *imperium; cf.* Livy xxvii, 20, 11; 21, 1; 21, 4; xxix, 19, 6. Confirmation by the *lex curiata* is expressly asserted in Cicero, Leg. Agr. ii, 11, 27: "Curiatis eam (potestatem) comitiis . . confirmavit."

[1] Livy ix, 38 *et seq.;* Dionysius v, 70, 4. To avoid unnecessary delay the sanctioning act was probably always kept free from the obligation of the *promulgatio per trinum nundinum*.

[2] The consuls proposed the curiate law for the quaestors; Tacitus, Ann. xi, 22. That these inferior officials required the law is further indicated by Cicero, Phil. ii, 20, 50. For the lower functionaries in general, see Gellius xiii, 15, 4. The agrarian *rogatio* of Servilius Rullus provided that the praetor should propose the law for the *decemviri agris adsignandis* required for the administration of his measure; Cicero, Leg. Agr. ii, 11, 28. That the magisterial helpers who were in need of the curiate law included not only the quaestors but also the lictors seems to be indicated by Cicero, Rep. ii, 17, 31: "Ne insignibus quidem regiis Tullus nisi iussu populi est ausus uti. Nam ut sibi duodecim lictores cum fascibus anteire" (the remainder of

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

a power in addition to that received through election.[1] Something can in fact be said in favor of this view. We are told that the newly elected magistrate could attend to no serious public affair until he had secured the passage of the act;[2] until then the praetor could not undertake judicial business; the consul could have nothing to do with military affairs[3] or hold *comitia* for the election of his successor.[4] Some of Cicero's contemporaries asserted that a magistrate who failed to obtain the law could not as promagistrate govern a province.[5] Or if without a curiate law he made the attempt, he would be obliged to conduct the administration at his own expense;[6] and if as promagistrate he gained a victory in war, he was denied a triumph.[7] Under such conditions it might well be said that a magistrate could engage in no serious public business before he had carried for himself the sanctioning law. But practice diverged widely from these rules. An act containing a provision for the election of functionaries might include a dispensing clause to the effect that the persons elected should, in lack of a curiate law, "be magistrates in as legal a sense as those who are elected according to the strictest forms of law."[8] Yet even without this special provision the magistrate regularly attended to much business before passing the law. The first

the sentence is missing). Dionysius ii, 62, 1 ascribes the introduction of the lictors to Tarquin the Elder. This curiate law, however, may not be thought of by Cicero and Dionysius as a mere sanction, but rather as a legislative act which called the lictors into being; *cf.* Mommsen, Röm. Staatsr., I, pp. 372, n. 1, 613, n. 1.

[1] In the opinion of Lange, Römische Altertumer, I, pp. 300 *et seq.*, the election gave *potestas* only; the *lex curiata*, *imperium*. But this distinction finds no support in the sources.

[2] Dio Cassius xxxix, 19, 3.

[3] *Ibid.*; Cicero, Leg. Agr. ii, 12, 30: "Consuli si legem curiatam non habet, attingere rem militarem non licet"; Livy v, 52, 15: "Comitia curiata, quae militarem continent." These statements are not, as some have imagined, to the effect that the *lex curiata* confers military power upon the magistrate; *cf.* p. 506, *supra*.

[4] Dio Cassius xli, 43, 3.

[5] Cicero, Ad Familiares, i, 9, 25.

[6] Cicero, Ad Atticum, iv, 18, 4: "Appius sine lege suo sumptu in Ciliciam cogitat."

[7] *Ibid.*

[8] Such an article in favor of the *decemviri agris adsignandis* appeared in the Servilian agrarian *rogatio* of 63 B. C.; Cicero, Leg. Agr. ii, 11, 29; *cf.* p. 505, *supra*.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

public act of the consul was to take the auspices, to determine whether his magistracy was acceptable to the gods;[1] and another auspication was held for the meeting of the *curiae*.[2] It was his custom also to make vows to the Capitoline Jupiter and to hold a session of the Senate, both of which acts had to be auspicated.[3] These facts disprove the theory that the curiate law conferred the *auspicium*. In the first session of the Senate in a new consulate, not only religious affairs, but civil and military matters of great importance were discussed and finally arranged, all of which business was regularly managed without a curiate law.[4] As to other administrative acts it is probable that the want of the *lex curiata* never hindered the performance of necessary business, civil or military. In case of danger to the state the *interrex*, who wholly lacked the curiate law, or the consul before passing the law could doubtless take command of the army;[5] and it is significant that the unlimited *imperium* and *iudicium* were granted the magistrate not by the *curiae* but by the Senate.[6] The law was indeed considered indispensable to the dictator in 310 B. C.[7] It is generally assumed by scholars that C. Flaminius, consul in 217 B. C., lacked this sanction.[8] Their reason is the statement of

[1] According to Dionysius, ii, 5 *et seq.*, those who are entering upon an office pass the night in tents and in the morning under the open sky take the auspices. Livy xxi, 63, 10, states that the consul dons his official robe in his own house, but neither he nor any other authority intimates that the public auspices were taken in his private house, as Mommsen, Röm. Staatsr., I, p. 616, asserts.

[2] Livy ix, 39, 1.

[3] Livy xxi, 63, 9; Varro, in Gellius xiv, 7, 9.

[4] Rubino, Römische Verfassung und Geschichte, pp. 365 *et seq.*

[5] Mommsen, Röm. Staatsr., I, p. 612, n. 1.

[6] Sallust, Cat. 29: "Ea potestas per senatum more Romano magistratui maxuma permittitur, exercitum parare, bellum gerere, coercere omnibus modis socios atque cives, domi militiaeque imperium atque iudicium summum habere; aliter sine populi iussu nullius earum rerum consuli ius est"; Hist. i, 48, 22 (Dietsch): (The Senate decreed) "uti Appius Claudius cum Q. Catulo pro consule et ceteris quibus imperium est, urbi praesidio sint, operamque dent, ne quid respublica detrimenti capiat." The interpretation which includes Appius Claudius, the *interrex*, with those who possessed *imperium* is confirmed by Livy (i, 17, 5 *et seq.*), who informs us that the *imperium* of an *interrex* lasted five days.

[7] Livy ix, 38 *et seq.*

[8] *Cf.* Nissen, Beiträge zum römischen Staatsrecht, pp. 51 *et seq.*

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Livy,[1] that he entered upon his office not at Rome but at Ariminum. The fact, however, that in this year he carried a monetary statute before his departure[2] proves that he began his official duties at Rome, and that Livy's tirade to the contrary is empty rhetoric. Probably because he set out without attending to the usual auspices, his political opponents were unwilling to admit that he had entered on his office. But the army obeyed his command, his name remained in the *fasti*, and his monetary law continued in force. Livy, while complaining at length of his failure to take the auspices, says nothing of the curiate law. His silence is significant.[3] We cannot be certain that the *lex curiata* was not passed in his case; but we have no right to imagine that it was not and then draw far-reaching deductions from our fancy.[4]

A more valuable instance is that of L. Marcius, elected propraetor by the army in Spain in 212 B. C.[5] Although he could not have had a *lex curiata*, the Senate, while censuring the election because it transferred the auspices to the camp, did not make the want of the law a ground for declaring the promagistracy illegal.[6] A still more famous case is that of the magistrates of 49 B. C., who with the Pompeian party fled from Rome before carrying a *lex curiata*, and yet were not prevented by this circumstance from holding military commands during their year of office or of continuing in command into the following year as promagistrates.[7] A further instance is that of Pomptinus, praetor in 63 B. C., who had no curiate law; nevertheless

[1] XXI, 63, 5 *et seq.* [2] Festus 347, 14.

[3] *Cf.* Livy xxii, 1, 5 *et seq.*

[4] Nissen, *loc. cit.*, supposes, too, that Appius Claudius, consul in 179 B. C., went to the army without a curiate law and for that reason the soldiers refused to obey him; Livy xli, 10. Livy mentions the neglect of other formalities but makes no reference to the curiate act.

[5] Livy xxv, 37, 5 *et seq.*; *cf.* xxvi, 2, 1. [6] Livy xxvi, 2, 2.

[7] Dio Cassius xli, 43. In this instance the Senate had conferred dictatorial power upon the magistrates by its supreme decree; Caesar, De Bello Civili, i, 5. That they were constitutionally in command, whereas the general direction of affairs by Pompey, however autocratic, was only informal, is expressly stated by Dio Cassius, xl, 43, 5. What Nissen, Beitr. z. röm. Staatsr. pp. 53 *et seq.*, says of these magistrates' lack of military *imperium* is therefore baseless.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

as propraetor in 61 he governed Narbonensis, where he gained a victory over the Gauls. This fact, too, is evidence that the want of the law did not in practice debar from military commands. From 58 to 54 B. C. he waited outside the gates of Rome for a triumph. The Senate would not grant it, and some opposed it. The privilege was at last given to him by the tribal *comitia* under praetorian presidency.[1] Although the want of the law involved him in inconvenience, he finally accomplished his purpose without it. Appius Claudius, consul in 54 B. C., insisted that, should he fail to carry the sanctioning act, he should nevertheless, since he was in possession of a province decreed to the consuls of his year in accordance with the Sempronian plebiscite, have *imperium* by virtue of a Cornelian statute until such time as he should reënter the city.[2] The law of Sulla, to which he referred, probably stated simply that the promagistrate was to retain his *imperium* till his return to the city, without mentioning the curiate law in this connection; and for that reason Appius believed the sanctioning act to be unnecessary. Cicero, who informs us of this matter, inclines to the interpretation of Appius. Our conclusion, accordingly, is that in practice, if not in legal theory, the *lex curiata*, however convenient it may have been, was not essential to the government of a province or to a military command.

It remains for us to consider whether it was indispensable to the holding of *comitia centuriata* for elections. The same Appius Claudius maintained that, though a curiate law was appropriate to the consul, it was not a necessity,[3] implying that without it he was competent to perform all the consular functions. He and his colleague, therefore, who was equally with-

[1] Cicero, Ad Atticum, iv, 18, 4; Ad Quintum Fratrem, iii, 4, 6; Dio Cassius xxxvii, 47; xxxix, 65.

[2] Cicero, Fam. i, 9, 25; *cf.* Q. Fr. iii, 2, 3. To these cases may be added that of the magistrates of 49 B. C., who notwithstanding their want of a curiate law continued into the following year as proconsuls, propraetors and proquaestors; Dio Cassius xli, 43.

[3] Cicero, Fam. i, 9, 25: "Appius . . . dixit . . . legem curiatam consuli ferri opus esse, necesse non esse.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

out the law,[1] were ready to hold *comitia* for the election of successors; and although party complications impeded the election, no one objected to it on the ground that the consuls were incompetent; for postponing the election the opponents resorted to auspical obnuntiations[2] and to prosecutions of the candidates for bribery.[3] The competence of these consuls to hold the elective *comitia* was further established by the Senate's desire that they should hold them at the earliest possible moment.[4] Their ultimate failure to elect successors was not owing to any objection to their competence.[5]

Scholars have attached great weight to the case of the magistrates of 49 B. C., who with the Pompeian party, as has been stated,[6] left the city before carrying a *lex curiata*. Though desiring, in the Pompeian camp of Thessalonica, to hold *comitia* for the election of successors, it was decided that the want of the law rendered the consuls incompetent to the function.[7] But the case requires careful examination. The Pompeians had with them two hundred senators, enough in their opinion to constitute a quorum, and their augurs had consecrated a place for taking auspices; so that it was assumed that the *populus Romanus* and the entire city were now located in the camp.[8] All these circumstances clearly imply an intention to

[1] Cicero, Att. iv, 17, 2.

[2] Cicero, Att. iv, 17, 4; Q. Fr. iii, 3, 2.

[3] Cicero, Att. iv, 17, 3 *et seq.*; 18, 3; Q. Fr. iii, 2, 3; 3, 2 *et seq.*

[4] Cicero, Att. iv, 17, 3.

[5] The compact (Cicero, Att. iv, 17, 2) made between Appius and his colleague in the consulship, 54 B. C., parties of the first part, and Memmius and Domitius, candidates for the consulship for the ensuing year, parties of the second part, that the parties of the second part in the event of their election should produce three augurs to testify that the parties of the first part had proposed and carried a *lex curiata*, or in failure to produce the witnesses should forfeit to the parties of the first part a specified sum of money, assumes, inasmuch as the evidence was not to be forthcoming till after the election, (1) that the *lex curiata* was not essential to holding the elective *comitia*, but (2) that it was highly advantageous to the promagistrate. Cicero, who often refers to the postponement of the elective *comitia* of this year, never intimates that the want of a *lex curiata* stood in the way.

[6] Page 510, *supra*.

[7] Dio Cassius xli, 43, 3; Livy v, 52, 15 proves that the *comitia curiata* could meet only within the *pomerium*.

[8] Dio Cassius xli, 43, 2.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

assume a temporary transfer of the city of Rome to the camp and to conduct the government in that place on the basis of this constitutional fiction. The execution of the plan was arrested by the plea that the consuls had no curiate law. The difficulty, however, was not so serious as Dio Cassius and the moderns have supposed. The assumption of the Pompeians that the city of Rome temporarily existed in the camp implied as well the existence of a *pomerium*, within which the consuls could legally have held a meeting of the *curiae*.[1] Or, in case they felt any scruple about the matter, the Senate could have decreed the consuls a dispensation from the law for the purpose of holding the elections. That they allowed a mere formality to balk them is out of the question. The whole situation is made clear by assuming that the consuls themselves, or more probably Pompey, did not wish elections to be held or a civil government established in the camp; such a proceeding would have disturbed still more the discipline of the army and would have roused jealousies inimical to the cause. On this interpretation the objection of the want of a law, which was clearly an afterthought, appears to have been a mere pretext.

We have seen promagistrates whose election to their respective offices had not been sanctioned by the *curiae* governing provinces and holding military commands; we have seen consuls who lacked the curiate sanction attending with less inconvenience to all their official duties. The same looseness characterized the application of the law to minor officials. The want of the sanction legally involved curule aediles, quaestors, and all other patrician officials who lacked the right to convoke the *curiae;* and yet it is impossible that in 54 B. C., for instance, when the consuls failed to pass the law, the curule aediles and the quaestors should have remained inactive through the entire year without leaving in our sources some trace of the disturbance which would have been caused by the suspension of their administrative functions. Dio Cassius states that no judicial process could be undertaken before the enactment of

[1] Livy v, 52, 15.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

the law; nevertheless Clodius as aedile in 56 prosecuted Milo before the people prior to the vote of sanction.[1] The quaestors entered office regularly on December 5;[2] and as the curiate law was carried for them by the consuls, they were necessarily in official duty for some time every year before their election could be sanctioned. It seems clear that ordinarily one curiate law was passed each year, under the joint presidency of the consuls and praetors, for all the officials who required it.[3] If that is true, a postponement of the law, or a failure to pass it, affected all the magistrates of the year. In the opinion of Mommsen,[4] the custom of the later republic was to propose the law on or soon after March 1. If this supposition is correct, the entire administration was conducted through at least a sixth of every year without the curiate sanction.

The question as to the meaning of this wide divergence between constitutional theory and actual practice can find an answer only in the history of the Curiate Assembly. For a time after the founding of the republic it remained politically important. From the institution of the plebeian tribunate (494 B. C.) to the enactment of the so-called law of Publilius Volero (471 B. C.) the Curiate Assembly elected tribunes of the plebs.[5] In 390 B. C., according to Livy,[6] it voted the restoration of a citizen from exile. Rubino[7] maintained that this assembly continued to be a real gathering of the people to the year of the battle of Cannae, 215 B. C., when the exigencies of the war with Hannibal brought into being a statute whereby the curiate

[1] Dio Cassius xxxix, 19, 3. The date of the trial was February 7, 56; Cicero, Q. Fr. ii, 3, 2.

[2] Lex Cornelia de XX Quaestoribus, in Corpus Inscriptionum Latinarum, i, 202; Cicero, In Verrem, i, 10, 30; Scholiasta Gronovianus, p. 395. Mark Antony when quaestor performed the functions of his office through the entire year without the sanction; Cicero, Phil. ii, 20, 50.

[3] It is always spoken of in the singular, the implication being that one act served for all; *cf.* especially Caesar, De Bello Civili, i, 6; Dio Cassius xxxix, 19, 3.

[4] Röm. Staatsr. i, p. 611.

[5] Cicero, Fragmenta, A, vii, 48: "Itaque auspicato . . . tr. pl. comitiis curiatis creati sunt"; Dionysius vi, 89, 1; ix, 41, 2; *cf.* Livy ii, 56, 2.

[6] V, 46, 10.

[7] Röm. Verf. u. Gesch. p. 381 and n. 2.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

act was to be passed by a vote of thirty lictors as the representatives of their respective *curiae;* in consequence the sanction was reduced to a formality.[1] The passage in Festus on which his theory depends is seriously mutilated; and his attempted restoration is objectionable, chiefly, (1) because it required no statute to keep the people from attending the *comitia curiata*,[2] (2) because without a statute a resolution of an assembly was valid, if each voting division was represented by a single person,[3] (3) because the measure, if dictated by military exigencies, should have freed the commander rather than the men from the necessity of going to Rome to enact the curiate law. Mommsen's restoration[4] is very different. In his opinion although the *lex curiata* had never been essential to the mere prolongation of the *imperium*, it was necessary to a person who passed without interval from a magistracy to a promagistracy or the reverse. The measure of 215 B. C., according to his reading, rendered the renewal of the curiate law unnecessary to such a transition. The passage in Festus is past healing; but in favor of Mommsen's interpretation we can certainly infer from the extant fragment (1) that in the year mentioned, owing to the nearness of Hannibal, a measure was taken to relieve officers in the field from the necessity of coming to Rome to propose the law for themselves, and (2) that the regulation was permanent.[5] Probably it was effected through a *senatus con-*

[1] Based on his reading of Festus 351, 34: "(Triginta lictoribus l) ex curiata fertur; quod Hanni(bal in propinquitate) Romae cum esset, nec ex praesidi(is discedere liceret), Q. Fabius Maximus Verru(cosus egit per tr. pl. et Ma)rcellus cos. facere in(stituit)."

[2] The attendance on the *comitia tributa* was sometimes as low as five to the tribe; Cicero, Pro Sestio, 51, 109.

[3] Cicero, Leg. Agr. ii, 7, 16 *et seq.*

[4] "(Transit imperium nec denuo l)ex curiata fertur, quod Hanni(bal in vicinitate) Romae, cum esset nec ex praesidi(is tuto decedi posset), Q. Fabius Maximus Verru(cossus M. Claudius Ma)rcellus cos. facere in(stituerunt)"; *Rheinisches Museum*, N. F. xiii (1858), pp. 565 *et seq.*; Röm. Staatsr. I, p. 613, n. 3; *cf.* also Bergk, *Rhein. Mus.* XIX, p. 606; Herzog, Geschichte und System der römischen Staatsverfassung, I, p. 679. "Transit imperium" is rendered doubtful by the proof offered in this paper that the *lex curiata* did not confer the *imperium*.

[5] The second inference is from the present tense of the verb *fertur*.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

sultum.[1] In consenting to the arrangement the Senate was making a great sacrifice to the exigencies of the situation. For, to maintain control over the commanders, it had insisted that they should enter upon their magistracies with all due formality at Rome.[2] The *lex curiata* had proved a material help to this end. But now the person already in command might continue from year to year at his post, relieved of the need of coming to the capital, where he would be temporarily subject to senatorial control.

This provision of 215 B. C. detracted from the value of the curiate law. Probably after this event, and partly in consequence of it,[3] the *comitia curiata*, which had been long declining, became at last a formality, attended only by three augurs, as witnesses to the proceedings,[4] and by thirty lictors,[5] who meekly cast the votes in obedience to the command of the presiding magistrates.[6] It is a noteworthy fact that whereas the statesman Cicero has much to say of the curiate law, Livy and Dionysius make little reference to it. Our conclusion must be that it was more important in the late republic than in earlier times. Probably it fell nearly into disuse after 215 B. C., to be revived some time before Cicero. Its rehabilitation was the work of the optimates, for we find the senatorial party chiefly interested in maintaining it during the age of Cicero. Since the *lex curiata*, subject as it was to impetrative auspices and obnuntiations, correlated closely with the Aelian and Fufian statutes, we may reasonably connect its revival immediately with their origin. Cicero[7] tells us accordingly that the *comitia curiata* have continued merely for the sake of the auspices.

[1] Herzog, Röm. Staatsverf. I, p. 679. A plebiscite is assumed by Lange, Röm. Alt. II, p. 704.

[2] *Cf.* Livy xxi, 63; xxii, 1.

[3] The existence of the act of 215 B. C. proves that the Curiate Assembly and the curiate law were at the time something more than a formality.

[4] Cicero, Att. iv, 17, 2; *cf.* p. 512, n. 5, *supra*.

[5] Cicero, Leg. Agr. ii, 12, 30.

[6] That the comitia curiata were no longer attended by the people in the time of Cicero is proved by his treatment of that assembly in Leg. Agr. ii, 11 *et seq.*

[7] Cicero, Leg. Agr. ii, 11, 27.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

The curtailment of the power of this assembly is analogous to the curtailment of the power of the king. The latter was reduced, in the *rex sacrorum*, to a shadow, continued merely for a religious purpose. The curiate *comitia* were likewise reduced to a shadow, maintained ostensibly because of regard for ancient custom and religion[1] but in reality as a part of the religious machinery operated with more or less effect for controlling refractory office-holders. During the age of Cicero the Senate strove to uphold its theory of the necessity of the law, while individuals in office and even the entire group of magistrates for the year looked upon it as appropriate indeed but unessential to their functions. At its best the theory could be but partially realized in practice.

Naturally the lictors never refused to vote the *lex curiata*, but it was often prevented or delayed by the veto of the plebeian tribunes.[2] As we hear nothing of such action of the tribunes in the early republic, we may conclude that it was a late usurpation. Their veto could be offset by a special resolution of the people that the persons elected "shall be magistrates with the same degree of legality as those who are elected according to the strictest form of law."[3] In destroying the tribunician power Sulla, perhaps consciously, strengthened the curiate law as a weapon in the hands of the Senate. He did not treat the subject, however, with his usual precision; for in 54 B. C. we find Appius Claudius appealing to a Cornelian law in justification of his intention to govern a province without the curiate sanction.[4] The procedure of Appius must have robbed the act of the little vitality which it still possessed. With the downfall of the republic it fell completely into disuse.[5]

GEORGE WILLIS BOTSFORD.

[1] Cicero, Leg. Agr. ii, 12, 31: "Illis (comitiis) ad speciem atque ad usurpationem vetustatis per xxx lictores auspiciorum causa adumbratis."

[2] Cicero, Leg. Agr. ii, 12, 30; *cf.* Dio Cassius xxxix, 19, 3.

[3] Cicero, Leg. Agr. ii, 11, 29; *cf.* pp. 505, 508, *supra*.

[4] Cicero, Fam. i, 9, 25; p. 511, *supra*.

[5] Herzog, Röm. Staatsverf. II, p. 905.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

REVIEWS

International Law: A Treatise. By JOHN WESTLAKE. Cambridge University Press, 1907.—Two volumes: xii, 356; xiv, 334 pp.

In 690 small octavo pages Professor Westlake has undertaken to set forth such "a knowledge of the most important topics" of international law as may enable the "English University students and average Englishmen interested in public affairs to appreciate the discussion on other topics as they arise in the foreign affairs of the country." Perhaps no work has been written on the leading topics of international law which is more likely to enable its readers to reason sanely upon the "other topics" of the subject. The work is "not intended as an encyclopædia of international law." It has none of the encyclopædic defects of many treatises. There is no hurried dictionary description of the numerous matters of international law. The fundamental principles are pointed out, analyzed and applied with such leisurely care, thoughtfulness and common sense that it is difficult to see how any reasoning person, layman or lawyer, can arise from the study of these two little volumes and lack the power to reason readily and well upon the "other topics" and questions cognate to those presented by Professor Westlake. It is a treatise eminently suited for use in connection with a good case-book by students and teachers who believe that the chief object of courses in law is to provide a training in correct methods of legal reasoning.

The object of the author is primarily educational, but the work represents the mature thought of a great legal scholar. It will undoubtedly be frequently cited by statesmen and judges and it will have a large influence upon the development of the law. It is, indeed, a veritable storehouse of sound doctrine. The only defect observable in the work, if it be permitted to criticize adversely one who has demonstrated himself a master, is the somewhat obscure language in which the thought has at times been expressed. By an occasional inverted construction of his sentences, unhappy choice of some unimportant words, the combining in one sentence of thoughts which might be better expressed in two or more sentences, or by punctuation which fails to guide a reader's understanding, Professor Westlake has entailed

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

upon his readers the necessity of re-reading some of his sentences; and he has made it impossible to quote his opinions without a loss of much of the force which their insight and soundness should give them.

It is refreshing to find throughout the treatise that the author has, as he states in his preface, "not attempted a deductive treatment" by reasoning from any of the conventional postulates, such as sovereignty, inherent rights, *etc.* The subject-matter of his reasoning is always a principle which he has induced from a particular historical fact. He recognizes that the earlier development of international law was "assisted by theories of a law of nature and nations," but he contends always that "what is good in such theories survives under the name of justice, a ground more solid but less capable of being systematized."

It is, therefore, with interest that one turns to the chapter entitled "The Political Action of States," in which the author discusses the distinction between the legal and political claims of states, the balance of power and the rights of self-preservation, intervention, equality and independence. Speaking of the "inherent rights of states," he points out the only matter-of-fact meaning which the term "inherent rights" possesses as applied to individual rights, and then concludes that "the tendency now is to treat international law as being relative to what is called 'the modern state,'" and that the modern state is "not fixed enough to make it wise to endow it with inherent rights instead of working out the problem which concerns it on its particular merits." Mr. Westlake next discusses "the alleged inherent right of self-preservation" by pointing out the restriction which every dictate of civilized justice places upon its exercise (*viz.*, "a duty violated by the person who has to suffer" harm), and observes that "self-preservation, when carried beyond this point, is a natural impulse" which it is "the office of jural law not to register and consecrate, but to control" by the application of sound principles of justice wherever and whenever an unreflecting submission to such untamed impulses would be destructive of society.

In speaking of the political action of states, the author says: "It is important to notice that the notion of sovereignty or independence has become the object of an extreme, possibly exaggerated, respect." In the reviewer's opinion, this "extreme respect" is not without practical value (so long as it does not mislead publicists), for it tends to increase the burden of the justification which the great powers feel called upon to make when taking political action. In comparing the Monroe doctrine (volume 1, page 311) with the European doctrine of the balance of power, Mr. Westlake considers that it bears a different

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

relation to international law, because it "has not been systematically carried out by enforcing on the other American states arrangements in which they were not consulted, and there are signs that those states would not allow it to be so carried out. Consequently it must stand, at least for the present, as a policy" of the United States.

The author discusses with keen insight the methods of redress accorded to states. He shows the natural limits of arbitration by pointing out the difference between "legal" and "political" questions and by noting that questions arise in which the law itself is the matter in controversy, as in the Alabama cases. He considers that general arbitration treaties should always contain "some reservation," because "every refusal to apply a general arbitration treaty in a case to which it ought to be applied would embitter the original difference, by adding a charge of bad faith to the original cause of difference"; and hence he believes that such treaties had best be limited to the "states which can count on one another to work them in good faith." War he defines as "the state or condition of government contending by force"—a definition which recognizes that the laws of war may belong to insurgents as well as to states. In pointing out the meaning of the terms "reprisal," "embargo" and "retaliation," he notes that they are ill distinguished. He traces succinctly the development of pacific blockade and concludes that "as against the quasi-enemy it is too well established as a recognized institution to be longer attacked with serious hope of success," but that "as against quasi-neutrals the legal position of pacific blockade must be considered as still ambiguous with the exception that there can be no condemnation." He considers that pacific blockade "increases the power of the strong over the weak; and by confusing the bounds of the use of force in time of peace, it impairs the certainty which is so important in international relations."

Of the second volume six chapters deal with belligerents, four with neutrals and the last chapter contains a discriminating statement and interpretation of the conventions formulated at the Second Hague Conference. Like the other chapters of the work they contain some new matter and much that is new in the way the old matter is treated. Chapters four and five are devoted largely to a discussion of the conventions of the First Hague Conference relating to war on land. The author's treatment of the law developed in prize courts is largely confined to Anglo-American precedents. His discussion of the theory and history of neutrality is characterized by a discriminating search for the principles and rules of law which may receive practical application in the solution of new cases.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

His appreciation of the rigorous distinction which a lawyer should make between principles of policy and of law and rules of law is well illustrated when he writes:

In order to pass from the principle to the rule it is necessary to seek as clear an understanding as possible of what is real participation in war, and we should launch into a vagueness productive of controversy rather than of enlightenment if we carried that notion further than participation in a specific operation of war. Hence,

Neutrality enjoins abstinence from taking part in any operation of war, and from interfering with any operation of war which is legitimate as between the belligerents, but not abstinence from any thing merely because it strengthens a belligerent.

For instance, siege being a legitimate operation of war as between belligerents, neutrality enjoins abstinence from introducing supplies into any place which is under siege, but it does not enjoin abstinence from general commerce with either belligerent, although commerce enriches and therefore strengthens those with whom it is carried on. For instance, again,

A neutral state must not permit either its subjects or a belligerent to make any such use of its territory as amounts to taking part in an operation of war [volume ii, page 163].

The three famous rules of the Treaty of Washington appear to Mr. Westlake "to be sound, both of the things which they declare ought to be prevented, and the vigilance which they declare ought to be used in their prevention." He does "not think that there was any miscarriage in their application to the case presented at Geneva, but," he philosophically observes, "however that may be, the possibility of miscarriage is incident to all judicial proceedings, to international arbitration not less than to others; and England, which has been so often successful in international arbitration . . . can look on their total result with equanimity."

Mr. Westlake is in his eighty-first year. He has just resigned the professorship of international law at Cambridge University which he has occupied for the past twenty years. His pioneer treatise in the English language on private international law was first put forth in 1858; three years ago he published the fourth edition of it; and in the preface of the treatise now under review he suggests that this work may "be followed by a volume dealing with . . . the history of international law." May the hope be realized!

G. W. Scott.

Columbia University.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

A Treatise on the Law of Naturalization of the United States. By FREDERICK VAN DYNE. Washington, Frederick Van Dyne; New York, The Lawyers' Coöperative Publishing Company, 1907. —xviii, 528 pp.

Mr. Van Dyne was for many years the principal authority in the Department of State upon questions of citizenship and naturalization. In 1904 he published a volume on *Citizenship of the United States*, to which the present work is intended by the author "as a companion volume." He states that this

> work is specially designed to meet the needs of judges and clerks of courts having jurisdiction in naturalization matters, of United States attorneys who appear for the government in naturalization proceedings and in proceedings to set aside or cancel naturalization certificates, of diplomatic and consular officers and other officers in the various branches of the government service dealing with questions relating to citizenship and naturalization.

We are told in the preface that the "numerous modifications of our laws, and the lack of any comprehensive work on the subject of naturalization have influenced the writer" to prepare an independent treatise. The first naturalization act was passed by Congress in 1790. The qualifications for admission to citizenship prescribed by this act have remained substantially the same, barring the short period in which the act of 1797 was in force, and the method of administration which it prescribed remained practically unchanged until the sweeping modifications enacted in 1906 and 1907. The changes in the conditions which have necessitated a change in the method of administering our naturalization laws are mentioned by the author. The population has increased from less than four millions to nearly eighty-seven millions. Our policy then was to encourage immigration; now it needs no encouragement. The lax and unsatisfactory administration of the naturalization law which took place during this period offered opportunities for fraud, forgery, false impersonation and traffic in false and counterfeit certificates of citizenship.

In the preparation of his work, Mr. Van Dyne has brought together a large number of the decisions of the courts and a larger number of the state department rulings. He has also taken note of the decisions made by international commissions. He describes the various methods of becoming a naturalized citizen and discusses in much detail the normal method of obtaining citizenship papers now made necessary by the additional requirements of the law of 1906. He outlines this process with

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

minuteness, setting forth not only the requirements of the law with reference to the applicant, but also the duties which are imposed upon the courts granting such papers, as well as upon the new Bureau of Immigration and Naturalization. Other chapters discuss the question of naturalization by the naturalization of the parent, naturalization by marriage and collective naturalization, including naturalization by conquest, by treaty, by special act of Congress and by admission of territory to statehood. Two chapters are devoted to expatriation and passports and there is a concluding chapter setting forth the attitude of various foreign governments toward their citizens who have become naturalized citizens of the United States and have returned to their native jurisdictions. The book may be adversely criticised for its somewhat defective organization, the long quotations from documents and cases and the failure to give a list of the cases cited.

An appendix contains all the laws of the United States relating to naturalization and expatriation, the naturalization conventions to which the United States is a party, recent executive orders of the president based upon the expatriation law of 1907, the naturalization regulations of the Department of Commerce and Labor and a list of foreign countries and their rulers.

HENRY B. ARMES.

WASHINGTON, D. C.

The Province of Burma. By ALLEYNE IRELAND. Boston and New York, Houghton, Mifflin and Company, 1907.—Two volumes: xxi, xvi, 1023 pp.

These are the first volumes of a series entitled *Report on Colonial Administration in the Far East*, foreshadowed by the same author's book on *The Far Eastern Tropics*, to which the undersigned gave some consideration in a general discussion of recent Philippina that was printed in this journal two years ago.[1] In 1901 Mr. Ireland was commissioned by the University of Chicago to visit the colonial possessions of Great Britain, Holland and France which are situated in that portion of the world where the Philippine Islands lie and which present similar problems, racially and otherwise, and to prepare a set of comparative reports on the government of these possessions and of the Philippines. Mr. Ireland spent some two years (1902–1904) in visiting, for the first time, Hongkong, British North Borneo, Sarawak,

[1] Vol. xxi, page 288.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Burma, the Straits Settlements, the Federated Malay States, Java, French Indo-China and the Philippines, also spending some portion of this time in India, China and Japan. He announces that he made during this period a collection of some five thousand volumes, consisting of government reports, gazettes, *etc.*, relating to the different countries that were the subjects of his investigations.

In his general preface to the series, he makes it plain that his primary purpose is to present data whereby administrative methods and their results in these various tropical possessions can be considered comparatively, so far as varying circumstances will permit. This plan, if consistently adhered to and well executed, will, as he points out, result in a work quite distinct in content from any hitherto produced in the study of colonization and altogether unique in its own geographical field. The analytic and comparative portions of the work are, moreover, to be brought out separately in two volumes which will close the series. The volumes devoted to the different possessions above named, said volumes not to exceed ten in number, will follow as nearly as possible a uniform table of contents, covering the following headings: General description of the dependency, its geography, physiography and climate; history of the acquisition by the sovereign power; the form of government; the people of the dependency; general administrative system; judicial administration; police administration; financial administration; medical administration; forest administration; public instruction; municipal administration; public works; civil service; trade and shipping; labor supply; bibliography; statistical tables.

Judging by these volumes on Burma, Mr. Ireland's work in presenting data on the foregoing lines for each of the possessions treated will be, in large degree, to abstract and condense the official reports, laws, administrative orders, *etc.*, that are in his hands. Unofficial publications are, of course, not excluded, but their use is in the main limited to the historical, physiographical, ethnological and similar portions of the work. This being the case, and the editorial work of analysis and comparison being reserved for the final volumes, judgment upon the undertaking is for the present restricted to the wisdom shown in the selection of material and the form of its presentation.

British India proper falls outside of the scope of this work and has, moreover, been quite thoroughly treated by Strachey and others. But, in presenting the facts as to the administration of Burma, the discussion with great regularity turns on British policy and methods in India; hence much of the space of these two volumes is occupied with ab-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

stracts or documents regarding the general features of British administration of India. For example, two very useful additions to Volume I, wherein civil service and public instruction in Burma are treated, are the report of the Macaulay commission on the Indian civil service (1854) and the resolution of the government of India, adopted in 1904, on the subject of Indian educational policy. We have also, among the appendices, mainly statistical, one giving details regarding examinations for the Indian civil service, including sets of questions for 1904. Upon the important question of the employment of natives in the civil service, a long quotation from a note of a former governor of the Punjab is given; but nowhere do we find statistics, or definite data of any sort, regarding the number of Burmese employed in the administration of their country, the posts which they fill, *etc.*

The administrative mechanism, the finances, trade figures, *etc.*, make up the major portion of the second volume on Burma, which is more largely statistical in character than the first volume. In chapter xiii, preceding a very good exposition of the land-revenue system, agricultural credit, *etc.*, in Burma, the land-revenue policy of British India in general is very adequately set forth by reproducing, in nearly complete form, the resolution of the governor-general of India in council of January 16, 1902.

In discussing the burden of taxation resting upon the people of Burma, the editor has more explicitly set forth (pages 570–573) his reasons for adopting as a basis of comparison in Indo-Malaysia the ratio of taxes to total exports rather than to population. In his *Far Eastern Tropics*, he rejected the ordinary comparison of taxes *per capita* as inapplicable to tropical countries, and one of his most widely quoted criticisms on our Philippine government was that which represented the annual burden of taxation to be equal to 46 per cent of the exports. The reasons Mr. Ireland now gives, in the place above cited, appear very cogent as regards the misleading nature of *per capita* tax comparisons between tropical communities and the industrially developed nations of the temperate zones. But who would build conclusions on such comparisons, in any event? And Mr. Ireland has not made out a case against the validity of comparisons of the *per capita* tax *as between these tropical communities themselves*, which is the real matter in point. However, his ratio of taxes to exports is, in any case, a valuable basis of comparison; and discussion of his methods in this respect must, of course, await the appearance of the reports on the other countries, and especially of the volumes devoted to comparative analyses.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

The volumes on Burma promise thorough and painstaking editing for the series. Each has a good map, the first being one of Burma, the second of that portion of the Far East which comprises the countries dealt with in this work. Volume II closes with an extensive classified bibliography of Burma, a glossary of Indian and Burmese words used in the work, and an excellent index.

JAMES A. LEROY.

Histoire de l'expansion coloniale des peuples Européens: Portugal et Espagne (jusqu'au début du xix^e siècle). By CHARLES DE LANNOY and HERMAN VAN DER LINDEN. Brussels, Lamertin, 1907. —viii, 447 pp.

In view of the surprisingly small amount of literature on the general history of European colonization, special welcome is to be given to the work performed and projected by the two Belgian educators, de Lannoy and van der Linden, the former of whom is connected with the University of Ghent and the latter with that of Liége. The volume under review belongs to a series now in preparation, which is to cover the entire period from ancient times to the present day. Judging from this first instalment, the work is to be a history not of colonization or of colonies as such, but rather of the processes by which distant territories were acquired by the several European peoples, of the manner in which the task of colonization was performed and of the effects produced upon the colonizing countries. In the monographs on Portugal and Spain the arrangement of topics is substantially the same. Each begins with a description of the mother country on the eve of colonial enterprise and then traces the process of expansion in its several phases. The second part treats of the administration of the colonies and of the economic system established therein, and gives a fleeting glimpse of the transplantation of Portuguese and Spanish culture. In the third part the influence of the successive periods of colonization upon the metropolis is discussed. A bibliography and a number of outline maps are to be found at the end of the volume.

Neither of these monographs can fairly be termed a product of critical research. As the authors frankly admit in their preface: "The synthetic character of our subject has not allowed us to make use, save in exceptional cases, of manuscript materials." The treatises, therefore, contain nothing that is strictly new, and throw no light on the many problems which are still to be solved by the study of documents buried in the archives of Portugal and of Spain. Instead, a

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

successful effort has been made to present in an orderly and scientific form the results already attained by scholarly investigation. To that end the writers assert that they have omitted from the materials used "no collection of printed documents and none of the important works." An examination of the bibliography, however, shows that this statement is inaccurate. Not less than eight valuable collections and at least twenty authorities of primary and secondary importance are omitted. Still, the number of serious errors in the monographs is small, the generalizations are in the main sound, and the bibliography and maps are as satisfactory as could be expected in a work which makes no pretentions of originality. Of its superiority to the productions of Dubois, Zimmermann, Morris and others there can be no doubt if the succeeding instalments attain the standard set by this volume.

The defects which characterize works of this class dealing with Spain and Portugal are, in general, the treatment of colonial life and industry as an array of annalistic statistics, and of colonial administration as an inert mass of wheels within wheels that seem never to go round. How the colonies were actually governed; what the colonists did at work and at play; how the mother country stamped her image upon them, and to what extent the lineaments of that image were modified by contact with local forces—these are the matters that interest the reader of to-day. Nothing very exhaustive and definitive can be expected, however, until the writers on Spanish and Portuguese colonization cease copying their predecessors or gleaning in fields already harvested, and seek trustworthy information in the archives which those predecessors rarely thought it necessary to visit.

WILLIAM R. SHEPHERD.

Modern Spain, 1815–1898. By H. BUTLER CLARKE. Cambridge, The University Press, 1906.—xxvi, 510 pp.

During the nineteenth century few countries of Europe have had a history so involved, so changeful and withal so dramatic as that of Spain. To the numerous works already existing on the subject is to be added the monograph by the talented but unfortunate Butler Clarke. Though the sudden death of the author prevented his revision of the proof sheets, practically all the slight errors or disputable statements that appeared in the manuscript have undergone careful correction at the hands of experts. The book opens with an excellent summary of the situation in Spain at the end of the eighteenth century and the

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

beginning of the nineteenth. Then follow the story of the restoration of absolutism under Ferdinand VII, the uprising of 1820 and its suppression, the difficulties connected with the question of the succession, and the first of the Carlist wars. From that point onward the reader is guided through the mazes of Spanish party politics, foreign intrigues, military ebullitions, pronunciamentos, ministerial dictatorships and court scandals which characterized the reign of Isabel II. The concluding chapters describe the troublous times of the short-lived republic and of the equally short-lived kingship of the unhappy Amadeo of Savoy, the recall of the Bourbons in the person of Alfonso XII, and the regency of Maria Cristina up to the destruction of the remnants of Spanish colonial dominion. The bibliography, with which the volume closes, has the merit of including the works that the author had tried and tested for their accuracy and usefulness.

That Butler Clarke knew Spain and loved it in spite of its apartness, or perhaps because of this quality, is apparent on all his pages. It may be doubted whether any Spaniard has surpassed this English scholar in correct appreciation of old Spain, or in clear comprehension of the vicissitudes of that semi-mediæval country while passing from the old order of things to the new, which is yet not altogether new. His power to tell a story simply, lucidly and impartially, his ability to characterize humanity in its peculiar Spanish mold and his accuracy in statement and conclusion all qualified him to handle a theme that needs a master hand for its delineation. No writer has given us an estimate of the Spain of to-day and of to-morrow terser in expression, truer in assertion and more keen-sighted in prophecy, than that contained in the closing paragraph of the book:

> Spain's hope of peace and prosperity depends on the purification of her administration, on the limitation of the activities of the Church to their proper sphere, on the creation of a feeling of confidence which shall allow better terms to be made with the national creditors, and shall set free for agricultural, industrial and commercial enterprise the huge capital now absorbed by state loans. Then, and not till then, will the most profitable Spanish enterprises be worked by Spanish capital and to Spain's advantage; then will Spain's most essential industry, agriculture, turn its energies to supplying the permanent home market, selling Spanish goods under Spanish names, instead of looking to the adventitious needs of its neighbours as its mainstay and sending out wines and oils that are the raw material for skilled manufacture. Then will labour turn to its task, undiscouraged by the knowledge that a hungry and corrupt governing class has ever an eye to its slender profits. Spain will be able to laugh at those who, standing

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

on either hand, urge upon her a theocracy or a commune. But many things are still to be done before honest Republicans cease to rail and honest Carlists to hope.

It is to be regretted that the book adheres so closely to the traditional lines of old-fashioned political history as to leave no room for an adequate account of the modification that is taking place in Spanish customs and institutions. The adjustment of Spanish life to modern ideas and methods—an adjustment which, though slow in progress, is coming to demonstrate in a broad and noble sense the truth of Louis XIV's triumphant cry, "The Pyrenees no longer exist"—surely offers more interest and instruction than the most accurate recital of political and military complications. This movement, however, still awaits an impartial recorder.

WILLIAM R. SHEPHERD.

The Cambridge Modern History. Edited by A. W. WARD, G. W. PROTHERO and STANLEY LEATHES. Volume V: *The Age of Louis XIV.* Volume X: *The Restoration.* New York, the Macmillan Company, 1907, 1908.—xxxii, 971; xxviii, 936 pp.

The Cambridge Modern History is both a notable achievement and a continual disappointment. In bulk it will be surpassed by but three or four of the great works of reference in the English language. Its list of contributors commands instant respect. It has already become an "authority." Yet the book seems to be written for no one in particular. The scholar misses that constant contact with the sources by way of foot-notes, which makes even a mediocre narrative worth his reading. The general reader will not find in its long and not always luminous text a royal road to history. Perhaps most appreciative, under the circumstances, will be the man who buys but never reads, the purchaser of "sets," to whose well-stocked library the great modern history will be an indispensable addition. He will have that sense of intellectual well-being which comes from the presence of authority. He can feel safe within the reach of knowledge—whatever that may be—as the mediæval monk must have felt with his Aristotle or Aquinas. But it is to be hoped that the history was not written for him.

It is now too late, however, to quarrel with the plan of the book; we must confine ourselves to the criticism of its execution. Even this must be very incomplete. There are no less than twenty-four chapters in each volume, mostly by different hands. To criticise in detail would be to prepare a catalogue at once imperfect and misleading.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

The reviewer, therefore, himself facing the limitations of space, cannot but be in a sympathetic frame of mind as he turns over these pages and realizes that, in spite of the great bulk of the work, there has not been room enough to tell the story. The limits allowed, generous as they seem, are frequently so inadequate as to lead to a merciless crowding of fact upon fact, a bewildering display of phenomena too slightly explained. It may be that this is the most significant thing in the book. It shows better than has ever been done before the immense range of the subject which the editors have attempted to cover. Vast as their enterprise is, it fails to offer more than a mere introduction to a thousand different things, each worthy of exhaustive treatment. There are few sections where one does not feel the sense of incompleteness. Sometimes this is accentuated by a style which touches things too lightly—that most irritating imitation of the Gibbonesque, saying things by inference, as though the writer feared that the reader might take offence if he ventured to tell him anything simply and directly. At other times the facts are too obviously thrown at the reader's head. The only way to compress the infinite variety of modern society into any set of books is to eliminate the unimportant and to tell the rest in a plain straightforward way. There are of course sections in these two volumes which do not sin against either of these two principles. But the erudite chapters cause the general reader needless suffering and are not always satisfactory to the scholar. Yet, as I have said, they tend to emphasize what is after all of almost as much importance as the facts which they contain, the well-nigh limitless scope of modern history when viewed not merely as political but as social evolution.

It is interesting to see how both editors and contributors have attempted to meet this wider view. The editorial idea comes out most clearly in the plan of the tenth volume. After twenty chapters of political history, a chapter on German and one on English literature, the economic achievements of the period are hurriedly covered in a twenty-third chapter, followed by a last short one upon the British economists. Such an incidental appendix to the main narrative is not the place for the development of the industrial revolution—the central fact of more than half of the story that precedes it. The English historians are slowly broadening out, but the process has hardly more than begun. How much more skilfully than his collaborators a historian like Émile Bourgeois, trained in the wider survey, has treated the France of this period. He rightly feels that his narrative fails unless it reaches the roots of things. There are relatively few figures on his

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

canvas, yet it carries the conviction of adequacy, because of the justness of his perspective. There is no blur of courtly faces in the foreground, as in the chapter preceding. A comparison of these two chapters shows that democracy by no means robs history of its charm.

Among so many articles by the most competent men obtainable, it is difficult to choose for comment. But most valuable, perhaps, in the fifth volume is the full treatment of central and eastern Europe. Professor Bury, who has turned from his studies in Byzantine history not toward western Europe but up the Dnieper to Kief and Muscovy, introduces the history of Russia. R. Nisbet Bain, certainly the best qualified English scholar, describes the age of Peter the Great. Dr. A. W. Ward himself takes up the settlement after Utrecht, and the development of Prussia. There is little new in the treatment of France; compared with the volume on Louis XIV just published by Lavisse, it is but a hurried sketch. England and the Stuarts receive slightly more detailed treatment. One cannot altogether pass judgment upon the general makeup of this volume, however, until the appearance of the next in the series, which is announced as *The Eighteenth Century*. The important chapters on science which this volume contains will then find their logical development in the changed intellectual atmosphere. The age of Louis XIV to its very close was linked to the seventeenth century. Seignobos has some justification in dating modern times from his death.

In the tenth volume the place of honor is given to diplomatic history, which has been placed in the competent hands of W. Alison Phillips, to whom also falls the treatment of Greece and Egypt. The chapter on the "Ideologues" by Lady Blennerhasset lacks breadth of view. She also contributes the chapter on the papacy. Professor Pollard's "Germanic Confederation" is slightly disappointing—coming from him. The Spanish colonies and South America receive somewhat full notice. The history of Russia and Poland is compactly told by Professor Askenazy. Apart from the sections already referred to, we have to commend the attempt to include the history of national literatures in the general survey. But the chapters in which this is done bring out rather forcibly the defects of the book. Apart from their hurried pace they suffer from a lack of coördination with the social forces which the national writers interpreted. To place the chapter containing Shelley and Byron before that which described the England against which they rebelled is to rob their short biographies of half their meaning. Some day we may have a book in which these things will be adequately correlated.

J. T. SHOTWELL.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Enterprise and the Productive Process. By FREDERICK BARNARD HAWLEY. New York, G. P. Putnam's Sons, 1907.—xiv, 467 pp.

Production: A Study in Economics. By P. H. CASTBERG. London, Swan Sonnenschein and Company, 1907.—xvi, 382 pp.

It seems to be generally admitted by economic writers of all schools that the economist no longer enjoys among the intelligent laity the prestige that was his in the days of the orthodox political economy. For this unfortunate state of affairs Mr. Hawley finds an explanation in the lack of an authoritative definition of economics and in the general failure of economists to accord due importance to the economic function of enterprise. In order to find a basis for an authoritative definition of economics the author makes an incursion into the field of methodology, and discovers principles of logic which, he believes, must revolutionize the procedure of economists in establishing definitions. The formal criticism of this part of his work may be left to the professional logician; economists will be chiefly interested in its fruits, of which Mr. Hawley gives a very fair assortment.

Mr. Hawley defines economics as

> the study of the interrelations of that group of egoistic human activities which are incited by the expectation of definite personal shares, prearranged in supposed conformity to functions performed, of the purchasing power resulting from the joint activity of two or more individuals [page 69].

Economists have long recognized that the *entrepreneur* form of economic organization, as the prevailing type at the present time, deserves especial attention. It has remained for Mr. Hawley to define economics in such a way as to exclude every other possible system of wealth production and distribution. The economics of a Robinson Crusoe, as well as the economics of a communistic state or of a primitive village community, falls entirely outside of the field of study of the economist. A rigorous interpretation of the definition would also exclude from economics the wealth-creating activities of the self-employing artisan or of the independent farmer. Mr. Hawley, however, by what appears to be a mere quibble, manages to force such activities under his definition. As a seller, such an independent laborer may be supposed to engage in joint activity with the buyer, for the creation of a product to be shared in prearranged proportions (pages 65–67). A little consideration of the possible meaning of "prearrangement" in

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

such a case as this inevitably arouses suspicion as to the validity of Mr. Hawley's definition.

Confidence in the definition is not increased by Mr. Hawley's classification of egoistic activities under the heads: social, individual and economic (page 75 *et passim*). This classification, he asserts, is universally recognized; it is a product of the "unconscious cerebration" of the human race. It will doubtless surprise him greatly to find that his book has fallen into the hands of a reviewer who has never heard of such a classification, and who challenges the author to cite one instance of economic activity that is neither individual nor social. If it were indeed true, as Mr. Hawley asserts, that the definition of economics is the major premise in every economic syllogism, there would be no occasion for giving further attention to this book. Since, however, very little vital truth has ever been discovered through attempts at the definition of the several sciences, we may properly proceed to examine in detail some of the other results of Mr. Hawley's study.

The standpoint from which our author approaches the problem of economics is, of course, that of the business enterpriser. Enterprise, in his opinion, is the one true productive factor, while labor, capital and land are merely means of production (page 112). The exact function of the enterpriser, in Mr. Hawley's theory, is not, however, clearly established. We are told that enterprise includes all volitional activity (page 114); economic enterprise includes all volitional activity in the economic field. This would lead one to suppose that such acts as the saving of capital and the appropriation of land are manifestations of enterprise; aud this, indeed, is Mr. Hawley's view. But such acts are excluded from economics on the ground that they are individualistic. Again, one would suppose that labor, at any rate the labor of coördinating land, labor and capital in production, is enterprise. This, however, Mr. Hawley stoutly denies.

A second definition of enterprise identifies it with ownership. As the legal owner of the product created by land, labor and capital, a man becomes an economic enterpriser. As the owner of land, of capital or of labor power, a man becomes an enterpriser, indeed, but not an economic one, as such ownership is individualistic (page 64). The relation of this concept to the one first given is not worked out by the author, but we may suppose that he regards ownership as a continued exercise of volition. This, of course, is psychologically untenable; it is very easy to cite cases in which no effort of will is required to remain an owner of property, while a strong effort of will may be required to divest oneself of it.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Yet a third conception of enterprise is given: the subjecting of oneself to uncertainty (page 115 *et passim*). The relation of this concept to the preceding is not at all clear. The exercise of volitional activity and the ownership of property do indeed subject one to uncertainty. But so also do non-ownership and inactivity. Living and breathing are enterprise, if we accept this view. Accordingly, when Mr. Hawley, in an attempt to resist socialistic attacks upon profits, declares that enterprise is the worst-paid function of all (page 127), the socialist can but acquiesce, without becoming one whit less a socialist. For life in general is undoubtedly underpaid.

The income of the economic enterpriser is profit. By what right does the enterpriser, who does not labor, who owns no capital nor land, receive a profit? A common view is that this income is a residuum, which falls to the enterpriser by virtue of the fact that competition fails to give to the several productive factors the entire value-product imputable to them. This view Mr. Hawley rejects. Profit, he maintains, is the reward for the assumption of responsibility and risk. Readers familiar with the economic controversies of the last decade will remember that this view was severely criticised by Dr. A. H. Willett in his *Economic Theory of Risk and Insurance*, on the ground that the enterpriser as such, having nothing to lose, can not be said to assume risk at all. If losses occur, they must be borne by the capitalist. Accordingly the reward for risk-taking must appear in the form of interest. Mr. Hawley appears to have noted this criticism (page 110), but he can not be said to have appreciated its full force.

Mr. Hawley is not entirely consistent in his use of the term profit. Ordinarily the word is used to designate the surplus left in the hands of the enterpriser after all costs have been met. In some cases it is used to designate the net gains above losses of enterprisers as a class (pages 106, 107). This would exclude from the category the gains of the lucky enterprisers in so far as these are counterbalanced by the losses of the unlucky ones. On pages 182 and 183 the increase in value of the items of a stock in trade is described as profit. In this case no deduction is made of the cost of carrying the stock.

The author's treatment of capital and of capital goods contains suggestions of value to the economic theorist, although it is far from being logically faultless. Capital is command over purchasing power in general (page 183). This appears to mean that capital is the value-aspect of saleable goods—a view which may now be called almost orthodox. Capital may be invested either in "capital goods" or in "opportunity." The term "capital goods" is limited to the class of

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

objects described by Professor Clark as "passive capital goods," *i. e.*, salable commodities and materials in process of manufacture. "Fixed capital" is assimilated to land, monopoly privilege, *etc.*, under the head of "opportunity." The reason for placing fixed capital in this category is that objects composing it yield an income of the nature of rent, not of interest. Rent is defined as the price of the use of a specific thing, interest as the price of the use of general purchasing power (page 184). A little closer analysis would have revealed to Mr. Hawley the fact that the income arising from the increase in value of a stock of passive capital goods does not fall under his definition of interest, but is analogous to the income which he denominates rent. With this correction Mr. Hawley's theory of the relations of rent and interest becomes practically identical with that of Professor Fetter. The only distinction between the two classes of capital goods is, after all, that one is not actually the subject of renting contracts while the other may be—a distinction of practical but not of theoretical importance. The distinction drawn by Mr. Hawley (pages 212–214), that the interest on capital embodied in "opportunity" is not a part of cost of production, while the interest on capital embodied in passive capital goods is a part of cost, will not bear close examination.

One of the results of Mr. Hawley's distinction between capital goods and opportunity is a very questionable theory of crises (pages 223 *et seq.*). For some obscure reason he concludes that the accumulation of savings first manifests itself in an accumulation of mercantile stocks and of the materials of production. Such a heaping-up of finished and partly finished commodities eventually produces declining prices and reduced profits of enterprise. In the end the accumulation of capital is checked, consumption carries away the surplus stocks, prices rise to a profitable level, and prosperity returns. Thus it appears that the accumulation of capital, instead of giving an advantage to the enterpriser, must bring about severe reductions in profits. If Mr. Hawley had recognized the fact that savings assume the form of fixed capital as readily as that of circulating capital, we should probably have been spared another theory of crises.

As specimens of the practical bearings of his theory the author adds three chapters on "Trade Unions and Strikes," "The Trusts" and "Socialism." In the first an elaborate argument is advanced to prove that whatever some laborers may gain by an artificial advance of wages must necessarily be wholly at the expense of other laborers—the wage-fund conclusion supported by new and very bizarre reasoning. In the chapter on "Trusts" reasons are given for preserving the good and

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

destroying the bad trusts. The chapter on "Socialism" is moderate in tone, but not of a character to carry conviction.

While Mr. Hawley's work does not appear, to the reviewer at least, to have produced theoretical results of a high degree of value, it is none the less worthy of careful study as an honest and resolute attempt to contribute to the solution of problems that are admittedly among the most important in economics. Mr. Castberg's book, on the other hand, presents to the reader only one problem: why such a book should have been written at all. It deals for the most part with the perfectly obvious, and it does this in an exceptionally unilluminating way. The author's point of view is similar to that of the late Mercantilists or early Physiocrats. According to him, the "true producers" are the owners of land and of other sources of production, chiefly natural. Laborers, bankers, merchants, transportation companies, are "assistants" of the producers. The rate of interest is treated as a function of the supply of gold. The persons employed by industry dependent on protection are treated as a net addition to the population. The book contains a tolerably accurate description of the operations of banking, exchange, *etc.*, but every student of economics has access to clearer and more adequate treatises on these subjects.

ALVIN S. JOHNSON.

UNIVERSITY OF TEXAS.

Money and Credit Instruments in their Relation to General Prices. By E. W. KEMMERER. Cornell Studies in History and Political Science. Volume I. New York, Henry Holt and Company, 1907.—vii, xi, 160 pp.

Some Chapters on Money. By F. M. TAYLOR. Ann Arbor, George Wahr, 1906.—316 pp.

Professor Kemmerer has performed two distinct services. In the first place, he has given the so-called quantity theory such a clear and explicit statement that critics cannot be forgiven if they assume that it ignores the influence of credit upon prices; and, in the second place, for the benefit of those who can be convinced only by facts, he has most patiently and intelligently worked out an inductive corroboration of the theory.

The author divides his essay into two "books," of which the first is an elementary discussion of the theory of money and credit, and the second a statistical inquiry into price fluctuations from 1879 to 1904. Book I, which contains eighty-eight pages, might quite well have been

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

condensed by the elimination of controversial matter. Since his essay appeals only to advanced students, a brief statement of his theory of money and credit would have been sufficient to make intelligible the equation he seeks to establish inductively in Book II. This is the equation:

$$P_s = \frac{M R + C R_c}{N E + N_c E_c}$$

P_s stands for the average price of all commodities sold for money or credit; M, for money; R, for the number of times money is turned over; C, for credit instruments; R_c, for the number of times C turns over; N, for the number of commodities exchanged for money; E, for the number of times they are exchanged; N_c, for the number of commodities exchanged for credit; and E_c, for the number of times they are exchanged. In plain English, we have here the statement that price is the quotient obtained by dividing the volume of money and credit by the volume of exchanges.

In Book II Professor Kemmerer endeavors to estimate the relative changes which took place during the period under examination in the various factors which determine price. The amount of money in circulation he takes to be the mean of the circulation at the beginning and at the end of each year, bank reserves being excluded. Basing his calculations on the investigation made by Kinley under the auspices of the comptroller of the currency, he accepts 75 per cent as the proportion of business transactions performed by means of credit instruments, and assumes that the total of checks deposited in banks represents a rough approximation to the check circulation. He finds that the annual rate of monetary turn-over was 47, *i. e.*, that each dollar was exchanged on the average 47 times each year. Thus he gets approximate estimates of M R and $C R_c$. On account of the influence which confidence has upon the use of credit, he makes an attempt to secure figures which will show the fluctuations of business confidence. For this purpose he has recourse to the market value of sales on the New York stock exchange, the prices of twenty-eight leading stocks, the rate of interest on call loans, and the number of commercial failures. Combining these factors, he gets an index number which gives a rough idea of changes in business confidence, the reciprocal of which shows business distrust. He arrives at N E by the construction of an index number based on changes in population, ocean tonnage, exports and imports, post-office revenues, railroad tonnage and earnings, the consumption of pig iron, coal, wheat, corn,

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

cotton, wool and wines and liquors, and the market values of sales on the New York stock exchange. His index number of prices is made up from several standard tables weighted 3 per cent for wages, 8 per cent for the price of stocks, and 89 per cent for wholesale commodities.

Having arrived at a numerical statement for all of the factors of the price equation, Professor Kemmerer proceeds to test the assumptions underlying his theory of money and prices. Having assumed that in ordinary times, *i. e.*, "under static conditions of business confidence," there must be a certain correspondence between bank reserves, money supply and check circulation, he constructs a chart showing fluctuations in money circulation and bank reserves. The result is gratifying, for the two lines show a proper degree of correspondence, the only period of marked divergence being during the period after the panic of 1893, when reserves increased because of the decline in business confidence. The author fails to note that after 1897 the bank reserves increased at a slightly faster pace than the money circulation; but this fact is quite in harmony with his theory, for it indicates that as business confidence grew a larger proportion of exchanges was mediated by credit. A second chart pictures a remarkably close correspondence between business distrust and the ratio of bank reserves to check circulation. This chart certainly seems to justify the author's claim that it "substantiates the contention of Book I, to the effect that the ratio of check circulation to bank reserves is a function of business confidence." Thus we get a statistical confirmation of a fact of common observation, to wit, that in good and confident times bank clearings are relatively large and reserves relatively small.

Finally, Professor Kemmerer gives us a chart in which the course of general prices is compared with the course of the "relative circulation." The reviewer agrees with the author that "one could hardly expect a more closely parallel movement of two complex economic factors functioning together than that shown by this chart"; but he regrets that the process of which the line indicating "relative circulation" is the product is not explained in greater detail. This line undoubtedly represents the second member of the author's price equation; but it is by no means obvious how it was obtained by the combination of his several index figures. It is also to be regretted that the line of "general prices" halts at 1901. If that line had been extended to 1904, its upward movement would doubtless have more nearly corresponded than it does with the increase of relative circulation after 1897.

Professor Kemmerer has done a good piece of work. His statistics may be inadequate and his index figures hypothetical, but he has given

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

concrete expression to the real quantity theory, or demand and supply theory, of money, and has indicated very clearly the only method whereby its opponents can discredit it by an appeal to facts.

Professor Taylor is an advocate of what may be called the up-to-date quantity theory of money. His book, which is "printed for the use of students in the University of Michigan," states the argument with lucidity and is often happy and forceful in its illustrations. A very commendable feature is the long list of problems at the end of each chapter. These indicate very clearly that Professor Taylor knows how to make his students do some thinking on their own account.

In the development of his subject Professor Taylor adopts a unique method. After the manner of a geometrician he lays down principles or theorems and proceeds with their demonstration, drawing numerous corollaries. This method is of doubtful value, except possibly to advanced students with a taste for mathematics. To beginners the subject of money is made clear by exposition rather than by demonstration. Very few of Professor Taylor's theorems will be fully comprehended by the student until he has mastered the whole subject. To beginners, therefore, unless they have the aid of a competent teacher, the book is likely to prove confusing. In the author's promised book on money and banking, it is to be hoped that he will expound rather than demonstrate.

Professor Taylor is excessively fond of classifications and subdivisions. He begins with a sound definition of money, namely, that it is something generally and habitually employed as a medium of exchange, and then announces that throughout his book he will use the word in its popular sense, making it include all forms of currency, although recognizing the fact that all of these except one are credit or representative money. Then he plunges us into the following classification of moneys: (a) principal or standard; (b) subordinate or inferior; (c) quasi-standard; (d) circulation moneys. The two most important functions of standard money are "systemic," *i. e.*, they are concerned with keeping the whole monetary system in good working order. These functions are (1) maintaining inferior moneys at par and (2) maintaining standard money in its place. Keeping standard money in its place means, we find, keeping it from being exported by the excessive issue of inferior moneys. From one point of view there are two kinds of standard moneys, the proximate or immediate standard and the ultimate standard. Sometimes standard money is referred to as money of ultimate redemption, sometimes as real money, and often as principal money. These terms generally represent distinctions worth

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

noting; but their employment frequently produces sentences which must greatly disturb a reader not thoroughly familiar with the sense in which they are used. For example, we read:

> Another characteristic of standard money, which seems distinguishable from that already brought out, is this, that it is the only money which *embodies* the ultimate standard, if any one does this, or it is the only money which is kept *in immediate connection* with the ultimate standard, if that standard is quite outside the moneys themselves, not being embodied in any of them. Standard money *embodies* the ultimate standard in a system such as ours, wherein it is a full-weight metallic money, having not only the same *money* value as the standard, but also the same *bullion* value [page 53].

As a further result of the author's passion for subdivision, we find moneys divided into hoards and effective stock. The effective stock is divided into circulation proper and reserves. There are four subdivisions of the circulation proper and six of the reserves, as follows: (1) required reserves of banks; (2) ultimate banking reserve; (3) surplus reserve; (4) bank-note reserve; (5) subsidiary coin reserve; (6) ultimate gold reserve in the United States Treasury. The last three of these are called "systemic reserves," their purpose being to maintain the monetary system. Granting that the author is correct in his principles of classification and subdivision, it is to be feared, nevertheless, that his bias in favor of such analysis will make his book difficult reading for all but his own students.

In the chapter on the value of money Professor Taylor is not always consistent with his own line of reasoning. Yielding again to his passion for classification, he declares that changes in the value of money may be either apparent or real, the former being due to causes connected with goods, the latter to causes connected with money. He then argues that changes in the price-level due to causes connected with goods, such as reduction of costs, cannot have any hurtful effect. He fails to note, however, that lowered costs will lead to a lower price-level only when more goods are produced and sold, the supply of money not having been increased; and that under such circumstances the prices of commodities other than those whose costs have been lowered will decline. On page 187 he says:

> Not a few great inventions affect the cost of many different products. Steam power in factories, steam transportation, cheap processes for making steel, and so on, all of these influence many industries. It is therefore quite natural to expect, from such inventions, changes of value so great,

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

and in so many articles, that the average of prices will be lowered. Such a fall in the average of prices will of course be an apparent rise in money. But, as in the preceding case, this apparent rise in money will be only a relative, not an absolute, change. The cause of the change is not in money but in goods. We value money no more, but goods less.

Surely prices would fall, under the circumstances here assumed, because of an increased demand for money, for more goods would be offered in exchange for money. Money would possess a higher value simply because the demand for it had increased, and no good reason appears for saying that such an increase in money would be apparent and not real.

Professor Taylor also declares that changes in the value of money due to fluctuations in business confidence are relative rather than absolute, for the causes are outside of money. According to his use of the terms relative and absolute, no change in the value of money can be real or absolute unless it is due to an increase or decrease in the supply of money. He does not clearly analyze the demand for money, and he fails to recognize the fact that the value of money is dependent quite as much upon demand as upon supply. In this respect he appears to be inconsistent, not fully perceiving the significance of a theorem which he correctly expounds on page 212, namely: "The value of money in any country or group of countries having the same standard, tends to vary directly as the need for it, *i. e.*, as the money work to be done." Perhaps the confusion on this point grows out of the author's tendency to use the word value in the subjective sense.

Professor Taylor is not altogether clear in his chapter treating of the international movements of gold. On page 117 he implies that, "the withdrawal of European capital from the United States after 1890 played a very considerable part in explaining the large net export of gold which characterized those years." Yet on page 136 he correctly says that the coinage of silver dollars and the use of treasury notes between 1870 and 1893 must in itself have tended to cause an outflow of gold. Gold exports, by the way, the author classifies into industrial and systemic, and the latter he divides into physiological and pathological.

In spite of its many excellent features, Professor Taylor's book cannot be highly recommended for the use of college students because an undue amount of space is devoted to unimportant theoretical considerations. References are here and there made to the monetary experiences of different countries, but these are not numerous enough to

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

satisfy the experienced teacher, and unfortunately some of the statements of fact are inaccurate. For example, the author's statement, on page 191, that Indian prices before 1873 rose and fell with the fluctuations of the gold price of silver, is entirely incorrect. Statistical inquiry has shown that Indian prices advanced very little during the period from 1873 to 1893, when the gold price of silver was cut in two. Again, we should be glad to have the author's authority for the statement, on page 192, that during our Civil War "every seller of goods hastened to change his prices so as to keep pace with the changes" in the greenback price of gold.

This book possesses the great merit of originality both in thought and in method. Furthermore, on many of its pages the style is easy and lucid. Its defects are superficial, being mainly matters of arrangement, classification and definition.

JOSEPH FRENCH JOHNSON.

NEW YORK UNIVERSITY.

Wage Earners' Budgets. By LOUISE BOLARD MORE. With a Preface by FRANKLIN H. GIDDINGS. Greenwich House Series of Social Studies, Number 1. New York, Henry Holt and Company, 1907.—280 pp.

The peculiar value of this book, in comparison with other studies of budgets and cost of living, is the intensive and personal character of the investigation and its restriction to a definite area in a great city. Only 200 New York families, within an area of perhaps one square mile, are studied; whereas 25,440 families throughout the United States were included in the Department of Labor investigation, 11,560 families at York, England, in Rowntree's *Poverty*, and the entire population of London in Charles Booth's *Life and Labor of the People*.

Naturally we look first to the chapter, "Comparison with Other Investigations," and are surprised to find the statement that the averages and percentages of the Department of Labor investigation, "drawn from a very large number of cases studied in a very general way, correspond very closely to the result of a smaller number of cases very carefully and intimately observed" (page 257).

This statement, while true in general, is misleading in at least one important particular, that of rent. It involves one of the many fallacies of averages. The comparative table on page 262 shows that rent in New York is 19.4 per cent of the expenditures, while in the United States it is 18.12 per cent. The correspondence is indeed close and

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

should be contrasted with the low percentage of 12 in Engel's German budgets (page 247). But the same table (page 262) classifies families by amount of income; and here it appears that the New York families having the smaller incomes pay 30.5 and 25.9 per cent for rent, while the United States families having similar incomes pay only 18.02 to 18.57 per cent for rent. In other words, the New York average of 19.4 per cent is made up of classified averages ranging from 30.5 down to 16.2 per cent, while the United States average of 18.02 per cent is made up of classified averages ranging only from 18.69 to 16.59 per cent. The important fact here brought out is that in New York the poorer families pay one-fourth or more of their income for rent, while the better circumstanced families pay but little more than one-sixth; whereas in the United States at large the poorer families pay about the same proportion as the better circumstanced families. The average for the United States is obtained from families living in small towns and in the country as well as from families living in cities, and the average is therefore entirely misleading when it comes to making comparisons for different classes living in the same economic environment. The particular value of Mrs. More's investigation is its limitation to a single environment, and it is unfortunate that she has not used this advantage to point out the statistical defectiveness of the other investigation. I have always wondered how it was that investigators in Europe and America could place rent so low as 12 to 18 per cent of expenditures, since I have never found a workingman or any person familiar with urban conditions who placed it at less than one-fourth. Mrs. More says that wage earners "plan to keep the [monthly] rent equal to the weekly income, or about one-fourth of the total income. This is an unformulated economic ideal with them. They move to better rooms as the income increases" (page 137). This statement coincides with my own observations. It is worth a great deal to have this fact established, together with the limits within which it is true, since the uncritical use of averages has in the past caused it to be overlooked.

Closely connected with the author's failure to point out this most significant contribution to exact knowledge is the fact that she gives no cross classification comparing the size of the incomes with the source of the incomes (husband, wife, children, boarders, *etc.*). She has given us four interesting tables of cross classification, comparing the size of the income with the size of the family, the size of the income with the nativity, the nativity with the size of the family, and the nativity with the source of the income. But these do not lead us directly to the vital

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

questions with which she concludes her book, namely, what is a fair wage, and what is the true meaning of standard of living. She states that "a fair living wage" in New York City should be *at least* a steady income of $14.00 a week, and that to provide adequately for the future it should be $16.00 or $17.00 a week (pages 269, 270). But it does not appear whether this should be the family earnings or the husband's earnings. In order to get at these questions we need to know, for example, the effect of the wife's and children's earnings on the "ambition and sense of responsibility" of the husband. Mrs. More says:

> As soon as the children grow older and require less of her care at home, the mother takes in sewing and goes out washing, secures a janitor's place, cleans office, and does whatever she can to increase the weekly income. She feels this to be her duty, and often it is necessary, but frequently it has a disastrous effect on the ambition of the husband. As soon as he sees that the wife can help support the family, his interest and sense of responsibility are likely to lessen, and he works irregularly or spends more on himself [pages 83, 84].

This observation should be tested by a cross classification according to source and size of income. Such a classification would then lead toward an analysis of what may be called the two elements in the standard of living: the *physical* standard, consisting of food, clothing, furniture, shelter, *etc.*, and the *moral* standard, consisting in part of what Mrs. More calls "the attitude toward life," but including amusements, drink, sense of responsibility, and especially the attitude toward education of the children. If a detailed inquisition into private affairs, such as this investigation displays, is justified, it must be on the ground that it helps to answer some practical questions. One question is definitely answered, namely, that raised by the charity organization societies with reference to the minimum income necessary for physical efficiency. This is done through the admirable comparison of twenty "dependent" families and twenty-three "independent" families, classified by size of incomes under $600.00. This indicates that families with incomes below $600.00 suffer "moral and physical deterioration, and some of them are in a state of disintegration" (pages 117–124). But other practical questions relating to those families above the charity line turn mainly upon the income earned by the husband and father. If the only ambition of the average parents is to have their children go to work at fourteen (page 87), then it follows that they are content to rest on a level of a mere physical standard, while the prospect for a

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

permanent elevation of the moral standand is unfavorable. The wife and children go to work merely to secure more expensive food, clothing, shelter and material comfort. If this is universally the attitude toward life, several extremely practical questions are suggested. Would a fair wage for the husband be of any permanent value to the family or to society? Is there a fundamental weakness in our system of education? What can education do towards raising the moral standard of living? Should the age of compulsory schooling be raised to sixteen, and, if so, what should be the character of the added schooling? These and other practical questions require a comparison of the source and size of income, combined with the other cross classifications already worked out by Mrs. More.

An important side of this problem is the question of thrift. Mrs. More states (page 110) that "thrift seems to be most marked in nations in which the preponderance of income is from the husband," and she cites the Norwegians. It seems to me that she has made too much of inadequate data as regards nationality. For the six nationalities, French, Scandinavian, Swiss, Austrian, Scotch and Cuban, she has altogether but thirteen families, but for each of the Italian, English, German and Irish nationalities she has from 15 to 35 families, and for the Americans 105 families. The question of thrift should be handled not merely by nationalities, but mainly by source and size of income. It seems also that the word "thrift" is used in a double sense. It is contrasted indiscriminately with wasteful management and with saving. Wasteful management is a matter of education and training. Saving, also, has a double meaning. In some places it means present sacrifice of the moral and physical standard solely for the sake of a future improved *physical* standard. In others it means sacrifice of the physical standard in order to educate the children and generally to raise the *moral* standard. One of the greatest lessons to be taught by an intensive study of budgets is the attitude which the public should take on the question of thrift of the working classes. Until this question is cleared up, all efforts toward social reform are handicapped by futile sermons on thrift. Mrs. More gives an answer to one part of the question, namely, that these sermons are ridiculous when addressed to those forty-three families whose incomes are under $600.00. She ought also to contribute to the question whether for larger incomes thrift is merely a culpable sacrifice of the wife and children for the sake of a mere physical standard, or an ambitious striving for intrinsically better things. If thrift is a part of the attitude toward life, we need to have it clearly distinguished from the question of household management,

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

and we should distinguish also between the physical and the moral standard. This brings us again to the classification of families according to source and size of income.

I have mentioned these points not so much by way of criticism as by way of suggestion. Mrs. More has advanced the study of budgets beyond any point that has hitherto been reached. It is to her work that I am indebted for the ideas I have expressed as to what might be done in the way of further analysis. My point is that the study of budgets has now reached the stage where we should raise the question of its practical utility. Does it leave us in a state of scientific curiosity or does it contribute to rational plans of practical work in the fields of charity, housing, education, institutions for thrift, trade unionism, etc. In order to do the latter the study of budgets must set out to answer the questions definitely raised by workers in these several fields.

JOHN R. COMMONS.

UNIVERSITY OF ILLINOIS.

A Living Wage. By JOHN A. RYAN. Introduction by RICHARD T. ELY. New York, The Macmillan Company, 1906.—346 pp.

This volume was originally submitted as a doctor's dissertation to the faculty of the Catholic University of Washington. It is a thoroughgoing and lucid study of the ethical basis of the living wage; and it aims to demonstrate the laborer's right to such a wage in the present industrial order. The content of the right is described as approximately $600 a year in the South. That amount is possibly a living wage in moderately sized cities of West, North and East; it certainly is not a living wage in some of our largest cities. The author attempts only to determine the absolute minimum. Economic facts conditioning this right of the laborer are analyzed and described, and a sketch of the obligations correlative to the right is offered.

The features of Dr. Ryan's work which give it its particular character are a thorough review of contemporary and historical writers of the Catholic Church in their discussion of the moral principles underlying wages; a defense of natural rights as these are understood by Catholic writers; a presentation of recent and current views of economists on the main theme; and a definite effort to translate the abstract right defended into its concrete equivalent.

The preponderance of ethical and economic treatment throughout the work are such as to permit but little discussion of the problem as affected by political science. Abstractly, the author holds that the

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

state has the right and the duty to compel employers to pay a living wage. He maintains that "there are good grounds for believing that an honest and sustained attempt to secure a living wage by legal enactment would meet with a fair measure of success." The obvious difficulties which would be met are not regarded by the author as disheartening. A legal working day of eight hours, exclusion of children under sixteen years from wage contract, state aid to laborers in securing homes and old-age pensions are advocated as indirect means through which "the state could extend the field in which a living wage would prevail." To meet the burdens involved, Dr. Ryan proposes income and inheritance taxes.

Naturally, a discussion of questions so fundamental as those treated in this work offers opportunity for varied dissent; but in whatever measure one agrees or disagrees with one or another of Dr. Ryan's views or measures, one cannot withhold from him the recognition due to a very able and lucid presentation of a most complex problem. The volume is to be warmly welcomed, for it is not only a meritorious piece of work, but also a contribution toward the solution of the essential problem of civilization—the establishment of justice.

CHARLES P. NEILL.

WASHINGTON, D. C.

Municipal and National Trading. By Lord AVEBURY. London, Macmillan and Company, 1907.—176 pp.

This book is of interest chiefly as an expression of the opinions of its distinguished author. As a brief in opposition to municipal conduct of commercial undertakings it will have some public interest. It presents forcefully some arguments in opposition to municipal trading, but little attempt is made to marshal the facts that are needed to prove the writer's assertions. Lord Avebury maintains that profits from municipal enterprises are confined to such businesses as the manufacture of gas, which have been long established and reduced to regular rules. Even in such cases, however, the municipal accounts are so kept as to make it impossible to determine with any accuracy what the real outcome has been. The profit, if any, has been very small, and results more satisfactory and more remunerative might have been obtained if the works had been leased to private companies. He asserts that on state railways the fares are much higher, while the trains are slower, fewer and less convenient; and he believes that questions of railway management cannot be introduced into the domain of politics without great detriment. He argues that the development of municipal trading has

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

seriously interfered with private enterprises and with the development of foreign commerce. It has reduced the demand for labor, increased prices and raised taxes. He claims that this has resulted in special injury to the working classes and that the movement, if carried to its logical conclusion, will result in a loss of freedom on the part of the working classes. He holds that municipal trading is responsible for an enormous increase of local expenditure and indebtedness and has greatly increased the burdens of the taxpayers. He seems to look at the question almost entirely from the viewpoint of the large taxpayer, and his arguments will appeal most forcibly to that class. He believes in government by taxpayers exclusively, and, as a logical corollary, he argues against the injustice of depriving the public-service corporations of the right to vote. He says:

> The next suggestion which has been made is that companies should have votes in some reasonable proportion to the rates they pay. In our large cities they pay from one-quarter to one-third and in some cases even more of the whole rate. It is monstrously unjust that they should have no votes in the expenditure of funds to which they contribute so largely [page 168].

In America public-service corporations, though without voting rights, have exercised great power in city politics, and in most cases this power has not been so secured or so exercised as to lead to a public demand for its legalization or extension.

ROBERT H. WHITTEN.

NEW YORK CITY.

Die volkswirtschaftliche Bedeutung der technischen Entwickelung der deutschen Zuckerindustrie. By THEODORE SCHUCHART. Leipzig, Werner Klinkhardt, 1908.—267 pp.

The German sugar industry finds its origin in the political conditions attending the French revolution. France, having lost her control in the West Indies and consequently her interest in the cane-sugar growth of those islands, turned her attention to the development of the home industry. As early as 1749 the sugar beet had been noted as one of several plants that contained sufficient saccharine qualities to justify hope of a profitable extraction of sugar. No attempt was made, however, to put the manufacture of sugar from beets on a commercial basis until 1808, when, with the encouragement of Napoleon, Charles Achard began experiments in that direction. His efforts were so successful that by 1827–28 France was already producing 2600 tons of beet-sugar. It was this success that influenced the Germans, at a time

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

when prices of grain and other agricultural products were falling, to undertake the new industry. By 1834–35 there were 21 sugar factories in the Zollverein and 66 in prospect; and in 1836–37 there were 122 factories capable of securing a product of sugar corresponding to 5.55 per cent of the raw material consumed. After this time, says the author, the beet-sugar industry may be considered as the sugar industry of Germany. The interest in the manufacture of cane sugar occupies from this time a position of continually decreasing importance.

At the present time the manufacture of beet sugar includes four principal forms: (1) the raw-sugar factory, which is concerned with the extraction of the raw sugar from the beet; (2) the sugar refinery, which takes the product of the raw-sugar factory and by a process of remelting and purifying prepares it for consumption; (3) the white sugar factory, which manufactures sugar for consumption directly from the beet; (4) the molasses-sugar establishment, which takes the worked-over residues from the other forms of manufacture and by chemical means extracts a part of the sugar still remaining which could not be obtained by a process of crystallization. The author traces the changes in the industry giving rise to these forms of manufacture.

In the development of the industry three leading characteristics appear. One is the enormous increase in the amount of raw material used annually in manufacture. The amount increased from 243,000 tons in 1839–40 to 17,300,000 tons in 1905–06. A second notable feature is the growth of large factories. The average annual manufacture for representative years is as follows:

1839–40 152 factories used an average of 3,196,431 pounds of beets.
1871–72 311 factories used an average of 16,508,608 pounds of beets.
1905–06 376 factories used an average of 92,246,360 pounds of beets.

The same tendency is shown in the increasing amount manufactured daily. Achard had considered that the ideal factory should manufacture 7719 pounds of beets per day. In contrast with this ideal of the early part of the century may be given the actual average manufacture of all factories for a twenty-four hour period in the following years:

1870–71	154,385 pounds	1890–91	591,074 pounds
1880–81	339,867 pounds	1900–01	992,475 pounds

And in 1905–06 the average had risen to 1,151,271 pounds. A third characteristic is the increased amount of sugar obtained from a given quantity of beets. To produce one pound of sugar in 1839–40 requires

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

17.4 pounds of beets. By 1870–71 the quantity required was reduced to 11.6 pounds. By 1890–91 this quantity was still further reduced to 8.27 pounds; and in 1905–06 only 6.80 pounds were necessary.

This remarkable change was due in large part to the system of taxation in force. From the time that the free trade influence of the English economists had been broken down by the teachings of Frederick List the industry had been favored by legislation. The special incentive to the growth of the industry lay, however, in the relation of the internal tax to the drawback on sugar exported. The tax was levied on the quantity of beets while the drawback was paid according to the amount of sugar. It was found that an increase in the amount of sugar secured from a given quantity of beets yielded a real bounty to the manufacturers. Various attempts were made to readjust the drawback to the changing ratio between the quantity of beets and the amount of sugar, but these failed to do away entirely with the virtual bounty on sugar exported. The resulting growth of the German sugar industry led to the adoption of bounty systems by all the leading sugar-producing countries of Europe. The threatened overproduction of sugar under state encouragement finally led to the calling of the Brussels Convention in 1902 and the abolition of the bounty system.

In tracing the growth of the industry, as indicated by the statistics given, the author discusses in detail the changes taking place in processes of manufacture and their economic effects. He also devotes a chapter to the various problems connected with beet-raising, such as the location of the industry, the influence of agricultural methods, the relation to other crops, stock raising as a means of disposing of waste products, and the problem of soil fertilization. Questions relating to the labor situation are also discussed, such topics as the influence of the wandering laborers from Russia, Poland and Galicia, the employment of women and children, wages, hours of labor, housing and factory conditions receiving special attention. A separate chapter is devoted to the relation of the industry to German commerce.

In conclusion the cost of production, the influence of sugar raising and manufacture upon related industries, the fiscal situation and the comparative position of beet sugar among exports are shown. The net revenue, in millions of marks, increased from 45.2 in 1871–72 to 147.6 in 1905–06. The consumption *per capita* has increased from 5.35 pounds in 1845 to 43.51 pounds in 1905–06. Sugar exports have increased in value from 9.5 million marks in 1872 to 236.6 in 1906, while the imports have decreased from 29.1 million in the former year to practically nothing in the latter. As compared with other

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

exports, sugar has decreased from 6.8 per cent in 1893 to 3.7 per cent in 1906, while cotton goods have increased from 4.8 per cent to 6.2 per cent and machinery from 2 per cent to 5.4 per cent.

As a whole, the work is thorough, well proportioned and written in a clear, attractive style. The raw-sugar industry and its related problems receive chief attention although the refining industry and the sugar combinations or "cartels" are duly considered. Dr. Schuchart has made a valuable addition to the list of monographs devoted to the history and economic significance of single industrial groups.

PAUL L. VOGT.

WASHINGTON, D. C.

The Polish Jew. His Social and Economic Value. By BEATRICE C. BASKERVILLE. New York, The Macmillan Company, 1906.—336 pp.

Before going to Poland, Miss Baskerville had occasionally seen the Polish Jew in the slums of the British cities, and had found him "too loathsome to be likeable" (page 3). Eight years of residence in Poland, where the species can be studied in its native habitat, has fortified her instinctive aversion with more leisurely observations.

The error of the Anglo-Saxon in judging of the Polish Jew is that he imagines "the English or American Jew removed to the Russian Empire and acting there as he acts in London or New York" (page 5). This is why "he reads with horror of Jewish massacres and Jewish persecution." But Miss Baskerville knows better:

> Has he had an opportunity of observing the methods of the Polish Jews who, living freely amongst a nation in the proportion of one in seven, have attained an influence in the proportion of seven to one? Has he seen the other side of the medal and counted the cases in which the Semite takes advantage of the Slav and the Jew rules the Russian? Has he seen provincial towns solely inhabited by Jews who live upon the surrounding peasantry? [page 5.]

The Jew is simply "a peril" (page 3). In country estates "Jews act as middlemen between the proprietor and those who purchase his grain, his potatoes, his horses and cows—nay, his milk and butter." Can the Anglo-Saxon imagine, the author asks, that in Warsaw, where "every third man is a Jew, . . . the trade and commerce are in the hands of Jews and . . . Jewish organizations have openly declared their intention of converting the Imperial army to the tenets of socialism?" "And yet these things are facts," the author exclaims, warn-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

ing the Anglo-Saxons that "these facts may, though in a modified form, spring up amongst them" (page 6).

Except in those things that can be picked up on the street—to use a familiar phrase—the author's information is obtained at second hand and mostly from anti-Semitic sources. Speaking of "Jewish customs," she relates with *naïveté* that "at Passover he [the Jew] eats *maca*," which "consists of flour and water, without salt, and is eaten for seven days instead of ordinary bread" (pages 303, 304). *Maca*, which is the Polish spelling of the Hebrew *matzoth*, is of course the "unleavened bread" of the Bible; but, apparently, familiarity with the Bible is not among the accomplishments of the author.

Through years of association with the Polish nobility the British lady has adopted the patrician view of the trader as one who "sponges" upon the producer; and the influence of the socialistic vocabulary upon the language of anti-Semitism is reflected in the description of the middleman as one who "exploits" the peasant (page 35). And yet we are told that the anti-Semitic lady "buys her laces and ribbons not at a Polish shop, but in the Jewish quarter, because the prices are lower" (page 66). The author allows that "the poverty of the ghetto . . . exceeds anything the Polish masses experience" (page 17). This, of course, is but natural, since the Jews "produce nothing and, so long as they can keep body and soul together by making small sums among the peasantry, will not touch manual labor, which they detest" (page 37). The author reiterates the same opinion when, speaking of Jewish common laborers, she tells us that "there are huge numbers of Jews in Poland who produce nothing." They "perform the heaviest tasks for the lowest possible wages. Such men become the hewers of wood and bearers of water, the porters, carters, rafters," *etc.* (page 57). Yet, according to the economic conception of the author, they "produce nothing."

Not content with the modest role of a reporter of things seen and heard, the author ventures into a discussion of Zionism, anti-Semitism, socialism and the revolutionary parties. Unfortunately her statements and comments betray utter lack of elementary qualifications for the task. She speaks of "Marx and Engel" (page 187) and even of "Marks" and "Markism" (pages 116, 122). The "theories of Marx and Engel," of which "Social Democrats are used to talk," contemplate, she tells us, the creation of "free units" (page 187). "It seems scarcely pertinent to remind the reader," she writes, "that Marks and Hess . . . had written upon the subject [of Zionism] before" (page 116). That both Karl Marx and Moritz Hess were dead years

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

before the very name of Zionism came into existence is, of course, known to every one who is at all familiar with the subject.

Lack of discrimination in making use of whatever information she has managed to gather has entangled the author in a maze of contradictions. We are told on one page that "the revival of anti-Semitism, apparent during the past few years even amongst the educated Poles, owes its existence to the Zionistic atmosphere which many Jews have helped to create" (page 128). Then, on another page, we learn that Polish anti-Semitism is "the instinctive dislike of the Slav for the Semite, not because he is dangerous, politically or economically, not because he lives on usury, but because he is a Semite . . . because he has a hooked nose and a high color, because he wears a halat and his wife wears a wig" (pages 138, 139). Subsequently we are informed that in "remote spots, untouched by the railway" and by the pernicious activity of the Jewish revolutionary Bund, "the most brotherly feeling still exists between the Jews and the Poles," which is evidenced by the fact that "when the Roman Catholic bishop makes a progress through his diocese" the Jews "run out to meet him, presenting him with bread and salt" (pages 185, 186).

The author's dislike of the Jew finds its logical complement in her antipathy toward the revolutionists, for the Jews have been the leading element in the recent revolution which she has witnessed in Poland. She gives an epic description of the process used by the police to obtain confessions from political prisoners, "which is nothing short of torture" (page 181). Yet she is ready with an argument in justification of this practice: "The methods there used, though contrary to British ideas of justice, save the police a great deal of trouble, because, being morally convinced of the prisoners' guilt, they do all in their power to make them confess it" (page 181). Quite naturally, the Russian "movement for liberty" is sneeringly referred to by the author, in quotation marks (page 73).

The book can be summed up in one sentence, borrowed from the author: "No ordinary intruder can understand what is going on" (page 156).

ISAAC A. HOURWICH.

NEW YORK CITY.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

BOOK NOTES

Under the title of *The Outlook for the Average Man* (New York, The Macmillan Company, 1907; vii, 240 pp.), Dr. Albert Shaw has brought together five lectures delivered before university audiences on various occasions. In one lecture the author considers the nature of the various vocations open to the young man in our new economic conditions; in another he reviews more closely the specific problems of a business career. Two papers, one on present economic problems and another on Jefferson's doctrines under new tests, relate more directly to the questions of citizenship. A fifth essay sums up the generous legacy which a century of progress has given us. Throughout the volume there runs a note of broad toleration and of firm confidence in the nation's destiny. Dr. Shaw has room in his scheme of things for tendencies which to many readers will doubtless appear antithetical. He holds that we shall always have room for private initiative and competition; that corporations, under the light of publicity, will have their work to do in the future as in the past; and that at the same time we shall use the regulative powers of the government, aiming to make our public administration just and efficient, so that if necessary it may be entrusted with enlarged economic functions.

The impressions of American life which Mr. H. G. Wells gathered in a short visit and has published under the title, *The Future in America* (New York and London, Harper and Brothers, 1906; 259 pp.), deserve careful consideration. On present American conditions he throws the searchlight of a keen and trained observation; and such a first view as his is in some respects more illuminating than the cross-lights of more detailed study. Perhaps the most important part of his book is the chapter on American "State-Blindness" (pages 152–166), in which he charges us with a lack of what he calls, with a probably unconscious repetition of Gneist's phrase, "the sense for the state." His forecasts, on the other hand, are unimportant. In spite of the title of the book and a first chapter on "The Prophetic Habit of Mind," he gives us scarcely a hint as to what the American future is to be or ought to be, except that it is to develop along lines less individualistic than those of the present, and that the Americans ought to do what no nation ever has done—determine their destiny by forming "a national purpose." Where Mr. Wells' sociology runs thinnest, it

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

is because of his ignorance of history. It seems, for example, a trifling blunder that he ascribes the maxim *caveat emptor* to the Romans (page 124); but his erroneous notion that the rule of the Roman law regarding the liability of the vendor for hidden defects of the thing sold was identical with the immoral English rule, and the inference which he probably draws that a similar rule obtains to-day throughout Europe, unquestionably help him to regard swindling as a necessary incident of an individualistic régime.

To Mr. Wells nearly all the evils of American social life are the inevitable outcome of competitive industrialism. He is lenient in his judgment of our predatory rich. "In a game which is bound to bring the losers to despair it is childish to charge the winners with murder. It is the game that is criminal" (page 101). To Professor E. A. Ross, on the other hand, the greatest evils of our social life are not indissolubly connected with the existing social order; and the remedy which he urges in his little book on *Sin and Society: An Analysis of Latter-Day Iniquity* (Boston and New York, Houghton, Mifflin and Company, 1907; xi, 167 pp.) is not socialism, as Mr. Wells understands socialism, but an up-to-date standard of social morals, enforced by a more energetic reaction of social sentiment against "respectable" sinners. Professor Ross does not hesitate to charge with murder those who sacrifice human life to secure larger or quicker returns from industrial enterprises, nor does he hesitate to brand as thieves those who despoil the public by stealth and fraud. The subtitle of his book indicates its chief contention, *viz.*, that in our complex modern life new forms of wrongdoing have appeared which our traditional morality does not recognize and stigmatize as sinful. We are ourselves, as a community, criminally tolerant of those who commit crime "at long range" and who "sin by syndicate." As it is the author's purpose to awaken righteous wrath, he is not to be criticized for writing with heat; but his book would be more effective if it were written more simply, with less obvious straining for novelty of expression.

In this respect Professor Ross might learn much from Jane Addams, whose *Newer Ideals of Peace* (New York, The Macmillan Company, 1907; xviii, 243 pp.) is written with equal warmth of conviction but with greater restraint, with a simplicity of expression and a tranquillity of tone that greatly increase its effectiveness. Miss Addams's plea is also for a higher morality—a morality not of the class nor of the nation but of the world. The idea that runs through the book and gives it its title is that the devotion and self-sacrifice which have hitherto

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

manifested themselves only in group solidarity or national patriotism are to yield to an aggressive enthusiasm for the welfare of humanity; and that in this way there will come an end of warfare and a reign of peace. Miss Addams finds survivals of "militarism" to-day not only in international politics but also in municipal government and in the reciprocal attitude of laborers and of capitalists. On municipal and industrial problems there are valuable chapters, giving the results of practical first-hand acquaintance with the conditions under discussion. Miss Addams's opinion of the foreign-born, whom she knows so well, is strikingly different from that expressed by Mr. Wells. To him the immigrant seems one of our greatest perils, and the boasted rapidity with which the immigrant Americanizes himself is largely "a protective mimicry." Mr. Wells doubts whether we can assimilate the later flood of immigration from Southeastern Europe, although he is oddly confident that the negroes will not remain a separate people. Miss Addams regards our foreign-born masses as "great reservoirs of human ability and motive power" (page 70), and in the immigrant quarters of our American cities she finds marked manifestations of the world-peace movement (page 235).

Few recent books in the literature of socialism are more worth while than H. G. Wells' latest work, *New Worlds for Old* (New York, The Macmillan Company, 1908; 333 pp.). It is an attempt—for which he apologizes—to answer the question, "What is Socialism?" Since the socialist movements have grown so complex, and so far away from original Marxism, the exposition is most welcome. Mr. Wells takes the utmost pains to make himself clear, even risking conscious repetition and the topical arrangement of a school text-book. His literary skill, to be sure, saves the treatise from any suggestion of the school-room. There is no heated polemic calculated to excite the reader to immediate action, but charm and grace of style are not less potent advocates of his cause. In content the book is very valuable indeed, taking up point by point the things that socialism stands for, stating the objections most commonly urged against them and the answer of the socialist to these objections. Such a method of treatment at once recommends itself to the student, and he will not easily find any other popular exposition of the ideals of current socialism so clear or so complete. To be sure the Fabian gospel fairly exudes from every page of the sections which urge the sweet reasonableness of his ideas. He would even reason with the papacy, in order to point out that the foe of continental clericalism may be robbed of its sting and—as high churchmen have long held—furnish the church with a militant ally.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

A third and enlarged edition of *An Inquiry into Socialism* by Thomas Kirkup (New York, Longmans Green and Company, 1907; vi, 216 pp.) will be welcomed by students of current political problems. Kirkup's sympathetic criticism, his breadth of view and his clear method of presentation have won universal recognition. His studies of socialism, once regarded as pioneers in English, have not lost their value. The changes in this volume bring it well up to date.

Robert Hunter's *Socialists at Work*, of which the first volume has appeared (New York, The Macmillan Company, 1908; 374 pp.) undertakes to set forth the present activity of socialists throughout the world and the extent to which the aims of socialism are being realized. Special chapters deal with socialism in Germany, France, Italy, Great Britain and Belgium, and a chapter by Charles Lapworth describes the movement in other countries. There are clever and sympathetic studies of socialist leaders, such as Jaurès, Guesde and Bebel. Based as the book is largely upon personal observation and first-hand material, it presents many facts not elsewhere accessible; and it is admirably written. Its charm is largely due to the personal note; and this will of course put the critic of socialism on his guard. A tendency is observable to claim for socialism achievements which are due, in part at least, to radical support which is not socialistic and to labor movements which repudiate any connection with socialism. A study of the table (page 253) which gives the strength of the socialist vote in various parliaments raises the further query whether certain radical or revolutionary parties which describe themselves as socialistic really belong in this category. It is certainly singular that in capitalistic countries like Great Britain and Germany the socialists should be relatively weak in parliamentary representation, while in non-capitalistic countries like Russia they should be relatively strong. The largest socialist percentage of the parliamentary vote—forty per cent—is found in Finland. The picture of what socialists are actually doing where they are "at work" would be more complete if the author had included some description of the development of municipal socialism in France; and to students, at least, the book would be more satisfactory if it included the official programs of the socialist parties in the various countries of Europe. There are few political documents so illuminating, and the reader would have the satisfaction of knowing that, in viewing modern socialism through them, he was using no man's glasses.

It is but fitting that the *Manifesto of the Communist Party* by Karl Marx and Frederick Engels should appear in translation in a universal language. Accordingly an Esperanto version has been prepared by

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Arthur Baker (Chicago, Charles Kerr and Company, 1908; 65 pp.). The English text is on opposite pages. If, as Mr. Baker imagines, Esperanto is the tongue "in which our children shall write the Constition of the World," we may expect that the preamble will contain these words: "La proletarioj havas nenion por malgajni krom siaj katenoj . . . Laboristoj de ĝinj landoj unuiĉu!"

In a little volume entitled *Anarchism*, Mr. Stevens T. Byington has rendered a distinct service by his translation of Dr. Paul Eltzbacher's anthology of anarchist literature (New York, Benjamin R. Tucker, 1908; xii, 309 pp.). This is perhaps the handiest and most satisfactory manual on the teachings of leading anarchists. The writings of Godwin, Proudhon, Stirner, Bakunin, Kropotkin, Tucker and Tolstoi are plundered in turn, the quotations being carefully fitted together into mosaics which rather effectively convey the essence of each man's thought. It is thus a sort of digest, a first-hand source, which has the advantage of not confusing the reader with a single system based upon contradictory theories. The book should be in the hands of all students of modern movements who have not time to investigate for themselves. It is well gotten up.

George Bernard Shaw has republished under the title, *The Sanity of Art* (New York, Benjamin R. Tucker, 1908; 113 pp.), an open letter which was published some time ago by Mr. Tucker in *Liberty*, the Anarchist journal. It is a reply to Nordau's *Degeneration* and contains some Shawian philosophy certainly worth preserving. The booklet is neatly gotten up.

The third volume of the monumental work by Professor E. Levasseur, on the history of the working classes in France, which was begun over fifty years ago, has recently been published under the title of *Questions ouvrières et industrielles en France sous la Troisième République* (Paris, Rousseau, 1907; 968 pp.). The veteran economist, whose powers of work put many a younger man to shame, takes up, in this portly volume, the whole range of economic and social development in France since 1870. The first third of the book deals with the development of each of the most important industries, with the government monopolies, with the problems of transportation, as well as of domestic and foreign commerce, and with the growth of the population in general and of the industrial population in particular. He next proceeds to sketch the evolution of the economic and socialistic doctrines. There are two chapters on professional education and national wealth, and the remainder of the volume is devoted more particularly to the various phases of the labor question. Thus we find chapters on

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

labor legislation, on the rate of wages and the cost of subsistence, on strikes, on labor unions, and on the general condition of the workmen both in and out of the workshop. M. Levasseur's views are everywhere moderate. The work will be welcomed as the fitting crown to the half-century's labors of its distinguished author.

That a detailed and careful study of industrial conditions in a French provincial town may be so presented to the world that it reads almost like *A Window in Thrums* and still satisfies the exacting student in search of economics instead of literature, has been proven by Dr. Laurent Dechesne, whose story of how the labor unions came to Verviers, *L'Avenement du régime syndical à Verviers* (Paris, Larose et Tenin; 551 pp.), is a model of local history and statistics. "Verviers is the Bradford of Belgium, as Ghent is its Manchester," says Dechesne. It is a town of about 50,000 inhabitants huddled in the narrow valley of the Vesdre, and is almost entirely given up to the woolen industry. They have had many strikes in Verviers; even the doctors went on strike to maintain their dignity and their fees. But the most important strike, the story of which is given in great detail, was that of the woolen workers. It resulted in a "treaty of peace" which recognized both unions, that of the owners and that of the workers, and compromised in minor matters. Verviers thus became definitely, in the summer of 1906, a city of unions, the first in Belgium to be dominated so completely by them, and it has been sufficiently proud of its unique position to invite imitation and to find in one of its citizens a worthy historian.

Mr. Albert Métin, head of the staff in the French Ministry of Labor, has prepared a small volume of rather unusual interest, *Les Traités ouvriers: Accords internationaux de prevoyances et de travail* (Paris, Armand Colin; xvi, 272 pp.). It is a collection of the treaties and conventions between European powers, which bear upon questions of labor and the treatment of laborers, accompanied by a historical commentary and statistics of foreigners domiciled in France and of Frenchmen living abroad. There are also comparative tables of labor legislation upon the points involved in the various countries. The significant fact is the relative insignificance of the results that have been attained. It is obvious that democracy has not yet captured the citadels of diplomacy, however strong it may be at home. It is almost a century since Robert Owen urged such problems upon the Congress of Vienna, and the historian has only some half-dozen treaties and conferences to record, none of them dating from before 1882. It seems, too, that most of what has been done has come about by a sort of extension of

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

the idea of tariff-reciprocity, enlarging that question to include the problem of increased cost of production, due to labor legislation, and attempting to strike some equilibrium for markets. Viewed in this light the international labor agreements come almost as a new stage in the history of economic politics. Not all conventions are of this kind however. International congresses, meeting to suppress the use of matches made of white phosphorus, so injurious to those who make them, and to put an end to night work by women, form a striking contrast to the international congresses of eighty years ago, when Metternich was master of ceremonies. Though comparatively little has been attained as yet, one feels, from reading Mr. Métin's admirable survey, that a new era has begun.

The formation of the Committee on Congestion of Population in New York city has emphasized anew the question of speculation in urban sites and of town planning in general. A comprehensive treatment of the problem will be found in Dr. K. von Mangoldt's *Die städtische Bodenfrage: Eine Untersuchung über Thatsachen, Ursachen und Abhilfe* (Göttingen, Vandenhock und Ruprecht, 1907; xxx, 745 pp). It is one of the publications of the German Association for Improved Dwellings (*Deutscher Verein für Wohnungsreform*) of which the author is the secretary. Dr. Mangoldt tells us that the natural consequences of leaving the extension of cities entirely to private initiative, checked more or less by the red tape of administrative supervision, as is almost universally the case, have been speculation, overcrowding and their attendant evils. He contends that town planning is a public, not a private function, and he believes that under a public scheme the great aim of decentralization will be accomplished. The book is extremely suggestive, but would have been greatly improved by a rigorous condensation.

It is difficult to see the justification of Dr. Paula Gutzeit's *Die Bodenreform: Eine dogmengeschichtliche kritische Studie* (Leipzig, Duncker und Humblot, 1907; 141 pp.). In spreading before us a condensed account of the theoretical movement for land reform in the various countries, Dr. Gutzeit repeats what is very familiar to all students of the problem. Nor do the chapters which deal with the relation of land reform to socialism and to physiocracy add anything at all to our stock of knowledge. To do nothing but thresh over old straw is not an especially valuable proceeding.

Bolton Hall draws no idyllic picture of the movement "back to the land" in his *Three Acres and Liberty* (New York, The Macmillan Company, 1907; xii, 435 pp.), but he endeavors to afford practical

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

guidance for those who are seeking to emancipate themselves from the uncertainties and pressure of city life by undertaking agriculture on a small scale. The volume contains advice on where to look for small farms, how to choose them, the most advantageous use of labor and capital, the purchase of implements and practical construction of buildings, and kinds of produce most likely to be profitable. The book is not calculated to produce a rush to the country, but it will be of very real value to those who are contemplating intensive farming.

Mr. Hugo R. Meyer has followed up his attacks on government control of railways in the United States and on municipal ownership in Great Britain by two works, entitled respectively, *The British State Telegraphs* and *Public Ownership and the Telephone in Great Britain* (New York, The Macmillan Company, 1907; 408, 386 pp.). These works, like the earlier ones, are distinguished by a wealth of information which is fresh and often enlightening. Unfortunately, however, the bias of the author is so apparent, and many of his deductions are so patently one-sided, that his arguments in favor of unrestricted *laissez-faire* tend rather to antagonize than to convince his readers. It is precisely in the case of the telegraph and the telephone, that the tide of well-considered public opinion in England has been distinctly setting against the positions which Mr. Meyer undertakes to defend.

Volume 13 of the *Transactions of the Connecticut Academy of Arts and Sciences* (1907) contains a study of an early example of government ownership of the means of transportation, namely, a monograph by Avard L. Bishop, instructor in commercial geography in Yale University, entitled "The State Works of Pennsylvania" (pages 149–297). The history of this experiment has been in a general way familiar, but Dr. Bishop has made good use of the original material, still to be found in Pennsylvania, in showing in all its details the improvidence, the reckless finance and the general corruption which marked this venture in state management of canals and railroads during the fourth and fifth decades of the nineteenth century, and which resulted in dismal failure. "It seems perfectly clear," we are told, "that the public works were used by the political party in power as an invaluable instrument of political corruption, destroying the morals of the citizens, and squandering the resources of the state" (page 244).

Mr. Placid Weiszenbach has collected several articles on the recent transfer of the Swiss railways to the government, under the title of *Die Eisenbahnverstaatlichung in der Schweiz* (Berlin, Springer, 1905; 192 pp.). As Mr. Weiszenbach is now the head of the federal railway

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

administration, his discussion will be found to be authoritative. The monograph contains all the important documents in the case.

What has been long lacking in France is a detailed history of each of the six great railways, together with an account of their financial relations to the government. This gap is now being filled by Mr. Henri Lambert, controller of railway accounts in the Ministry of Public Works, in a series entitled *Monographies des grands réseaux des chemins de fer français*. The first number, which has just appeared, is devoted to the Eastern Railway, under the title *Réseau de l'Est* (Paris, Dunod et Pinat, 1907; 196 pp.). The work is admirably done and will be indispensable to all students of French transportation.

An interesting and hitherto almost virgin field of investigation has been well covered by Professor Ulrich Bonnell Phillips in *A History of Transportation in the Eastern Cotton Belt, to 1860* (New York, Columbia University Press, 1908; 405 pp.) Mr. Phillips, whose studies on ante-bellum economic conditions in the South are favorably known, purposely confines his inquiries to South Carolina and Georgia as typical of the South before the war. The investigation is both thorough and interesting, and the relations of transportation to the wider economic interests are never lost sight of. A special chapter is devoted to the state ownership of the Western and Atlantic, although for a study of government railways an examination of the North Carolina experiments might have been more to the point. We trust that the author may be persuaded to extend his interesting researches to other parts of the South as well.

In a well written book, *Sir Rowland Hill: The Story of a Great Reform* (London, T. Fisher Unwin, 1907; xi, 327 pp.), Eleanor C. Smyth, the daughter and last immediate descendant of the great postal reformer, gives an intimate picture of his life during the thrilling days of the fight for penny postage and general postal reform. The first chapter deals with the old postal system and its many evils and abuses. The second is devoted to the work done by some of the earlier reformers—with the main purpose, we fear, of attempting to prove that Hill himself owed little to these pioneers. As is to be expected, the attempt appears somewhat ungenerous to the disinterested reader. The remaining chapters of the book give what is on the whole a satisfactory account of Hill's plan of reform, of the fight against and final overthrow of the old system and of the subsequent career of Hill in connection with the administration of the new system. The book will serve the need of the general reader in that it deals more particularly with Hill's work as a postal reformer, and does not dwell at too great

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

length on the earlier periods of his life. Those who desire a fuller biography and a more detailed treatment will find Dr. Birkbeck Hill's *Life of Sir Rowland Hill and History of Penny Postage* a more satisfactory work. The chief fault of the book under review is the marked bias which every page reflects; but every reader will forgive a daughter's devotion to a father's memory.

Several years ago Mr. August Kohn was commissioned by the Charleston *News and Courier* to investigate the cotton mills in South Carolina. His reports were printed in 1903. They have now been practically re-written and are published, under the title of *The Cotton Mills of South Carolina*, by the State Department of Agriculture, Commerce and Immigration (Columbia, 1907; 228 pp.). They afford a live and up-to-date picture of actual conditions, with a decided bias, however, which is best reflected in the following quotation from the chapter on "Child Labor": "The cotton mill officials do not like legislation directed against the mill interests. They think they ought to be let alone, and I really think that they would be better off and that conditions would be better if they were let alone" (page 123).

The Tariff and the Trusts by Franklin Pierce (The Macmillan Company, 1907; ix, 387 pp.) is a plea for the speedy repeal of the Dingley law. It contains nothing new. The old familiar facts and ideas are stated in the old familiar way. Mr. Pierce wants the great American people to arise in a frenzy of patriotic enthusiasm and smite the trusts with the free-trade ax. In his opinion the tariff is both mother and father of all the trusts and most of the other evils we suffer. All the facts related by Mr. Pierce have long been known to all who have taken the slightest interest in our tariff history. The tale of corruption and extortion could be drawn out indefinitely. Yet the fact must be recognized that the people are not excited about the tariff. When it is revised let us hope that the revision will not be so radical as to invite a return to higher protection at the next election.

It is not often that a pamphlet in favor of protection assumes the form of a survey of European history. But Mr. J. W. Welsford, in his *Strength of Nations: An Argument from History* (London, Longmans, Green and Company, 1907; x, 327 pp.), presents such an essay. In spite of the crispness of his style and a somewhat serene confidence in his ability to discover the real lines of cause and effect in the labyrinth of the past, the new Orosius of the Tariff Reform League will find at least as many students of history who will question his synthesis as economists convinced by his arguments. On the other hand the book does show originality and is decidedly stimulating. It

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

is well to have old conclusions challenged and to look now and then at the perspective of history from a new angle, even if it distorts the view somewhat. For instance, while we cannot agree that history of the French Revolution—Reign of Terror, Napoleonic empire and all—was determined by Calonne's commercial treaty with England in 1786, it is well to have its possible influence urged upon our attention. We can but regret, however, that the economist has made himself the successor of the theologian in the use of historical data for his polemics.

Professor George Mygatt Fisk has published a very useful handbook on *International Commercial Politics* (New York, The Macmillan Company, 1907; 288 pp.). The eighteen chapters of the book sketch the development of commercial politics through the phases of mercantilism, free trade and protection and give a succint treatment of the history and analysis of tariff systems, commercial treaties, commercial statistics, navigation politics and trade-promoting institutions. Each chapter is accompanied with a series of "suggestive topics and questions," and an admirable classified bibliography is supplied.

One of the students of Professor Neumann of Tübingen, Dr. Wilhelm Gerloff, has addressed himself to a fiscal problem which is assuming much importance in parts of Switzerland, in a monograph entitled *Die kantonale Besteuerung der Aktiengesellschaften in der Schweiz* (Bern, A. Francke, 1906; 264 pp.). Dr. Gerloff shows how the varying industrial development in the separate cantons has brought about a widely diverse system of corporation taxes. With many of the difficulties, as, for example, those of double taxation, we are quite familiar in the United States. Dr. Gerloff favors a separate tax on corporations, similar to that already levied in the industrial cantons, like Baselstadt, Zurich and St. Gallen. A valuable feature of the work is an appendix containing the legislative provisions of each canton affecting the corporation tax.

Perhaps at no period in the history of economics has so much attention been paid to the subject of crises as in the past few years. The latest contribution to the topic is the two-volume work of Dr. Mentor Bouniatian, *Studien zur Theorie und Geschichte der Wirthschaftskrisen* (Munich, Ernst Reinhardt, 1908; 188, 312 pp.). The first volume is theoretical in character, and the fundamental idea of the author is apparent from the title itself: *Wirthschaftskrisen und Ueberkapitalisation*. Dr. Bouniatian, however, employs the term overcapitalization in a somewhat different sense from that which is usual among American economists. Capitalization with him means the accumulation of capital, *i. e.*, of the pieces or embodiments of capital;

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

and overcapitalization therefore denotes a construction of factories, machines *etc.* at a rate too rapid for the powers of consumption to dispose of. A crisis is the result of this disproportion between the inherent forces of capital accumulation and those of consumption. The second volume is historical and is entitled *Geschichte der Handelskrisen in England.* Owing to the recent appearance of Tugan-Baranowsky's history of crises in England since 1825, Dr. Bouniatian has laid chief stress on the earlier periods and closes his study with the year 1840. With the exception, however, of the discussion of the monetary disturbances of 1695–96, Dr. Bouniatian has added but little to what is to be found in the familiar English literature of the subject. In his account of the South Sea Scheme he appears to have overlooked Dr. Brisco's recent study of Walpole, which would have cleared up some doubtful points. The proof-reading of the English names leaves much to be desired.

The second volume of Professor Cunningham's *Growth of English Industry and Commerce in Modern Times* has now appeared in a fourth edition in two substantial parts (Cambridge University Press; New York, Putnams; xxviii, 1039 pp.). The fourth edition of the first volume appeared in 1905. In the four years which have elapsed since the preceding edition there has been considerable addition to our store of knowledge through detailed investigation of the various phases of the subject, especially as regards agricultural conditions. Dr. Cunningham has endeavored to incorporate the result of these researches, but has found it necessary to re-write only those sections which deal with the enclosures in the seventeenth and eighteenth centuries and the disappearance of small holdings.

The Macmillan Company has reprinted the second edition of J. K. Ingram's admirable little *History of Political Economy* (New York, 1907; xv, 246 pp.)

Dr. Julius Becker has thrown light on a somewhat neglected period of economic thought by his study of the German *laissez-faire* school, under the title, *Das deutsche Manchestertum: Eine Studie des wirthschaftlichen Individualismus* (Karlsruhe, G. Braunsche Hofdruckerei, 1907; 131 pp.). After an introductory chapter on the origin of *laissez-faire* and the views of the English classical school, Dr. Becker devotes a chapter to Prince-Smith, the chief representative of the German school. We are told that Prince-Smith was born in Great Britain, the son of the governor of British Guiana, and that he received his education in England. Going to Germany as a newspaper reporter, he became teacher of English in the gymnasium of Elbing at the age of twenty-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

two, and soon became wholly identified with German activities. Dr. Becker gives a full and interesting account of the movement started by Prince-Smith, which soon spread to the field of social as well as of trade reform, and he describes the forces which brought about its decay and disappearance in the seventies.

The most important changes in the fifth edition of Professor Marshall's *Principles of Economics* (London, Macmillan and Company, 1907; 870 pp.) are the relegation to a series of appendices of the discussions which are not essential to the main drift of his argument, the addition of an entirely new appendix on the incidence of local rates, and the rewriting of the chapter on standards of labor and wages and the chapters on marginal costs and value. Professor Marshall takes great care to make his position clear upon several matters of controversy, notably, his understanding of the terms statics and dynamics, of the terms capital and income and of the "seemingly simple, but really treacherous, phrase 'the whole produce of labour.'" He announces that he has in print part of a volume on *National Industry and Trade* and that he intends to bring out as soon as possible a volume on *Money, Credit and Employment.*

The eighteen essays contributed to the *Festgabe für Adolph Wagner* (Leipzig, C. F. Winter'sche Verlagshandlung, 1905; 343 pp.) fall roughly into discussions on population, the history of economic doctrines, the theory of taxation, socialism and the theory of prices. The two essays on population doubtless owe their origin to the importance given by Professor Wagner to questions of population in his tariff essays, as they appear in his *Agrar- und Industriestaat.* In the paper entitled "Der Streit um Malthus' Lehre," Professor Dietzel devotes the greater part of his argument to an examination of the thesis advanced by Oppenheim and Wolf. In the article on "Sir Mathew Hale und John Bruckner mit einer Geschichte der vormalthusischen Bevölkerungstheorie," Professor Hasbach leads the reader through a laborious discussion to the conclusion: "Der Rückblick auf eins der unerfreulichsten Bücher die je geschrieben worden sind beweist genügend dass wir Hale nicht als Vorläufer des Malthus ansehen können"! The most valuable essays in the collection were contributed by Professor Bresciani of Pavia on "Alcuni appunti sulla distribuzione del reddito e del patrimonio in Prussia," and by Professor Benini of Rome on "I diagrammi a scala logaritmica."

Shortly after the death of Le Play in 1882, his disciple and coworker, Charles de Ribbe, issued an appreciative sketch of his life, based largely on letters regarding matters in which the two men were

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

intimately associated. This account, *Le Play d'après sa correspondance*, is now re-issued in a second edition (Paris, Victor Lecoffre, 1906; vii, 266 pp.). M. Henri Joly contributes a preface and a few supplementary notes. Le Play's chief interest in his famous family monographs was in deducing from them evidence in support of his social gospel of family solidarity, and it is this side of his career which appears in his letters to M. de Ribbe. The correspondence discloses something of the charm of Le Play's personality, and reveals clearly the strength of his belief in the importance of the family and religion, and the zeal and persistence with which he threw himself into the effort to rally support in their defense.

A reprint has appeared of Lewis H. Morgan's *Ancient Society* (New York, Henry Holt and Company, 1907; xvi, 554 pp.), but without change or revision.

The ordinary theory of the origin of interest is that it arose out of the loan of implements or weapons, or in connection with primitive commerce. Dr. Michael Hainisch, in *Die Entstehung des Kapitalszinses* (Leipzig, Franz Deutike, 1907; 112 pp.), seeks to controvert this position. His thesis is that the taking of interest is to be traced back ultimately to the loan of cattle (or, in parts of Asia, of horses or camels). The book is full of interesting facts culled from a great variety of sources and ranging from Ireland to Babylon. It is obvious, however, that in the absence of positive proof, which is almost impossible to adduce, Dr. Hainisch's theory remains nothing but an ingenious conjecture, based on very fragmentary material.

Not only the students of Greek antiquities, but all who are interested in legal history, will welcome the separate reprint, from the *Festschrift* in honor of Ferdinand Regelsberger, of Professor H. F. Hitzig's *Altgriechische Staatsverträge über Rechtshilfe* (Zürich, Institut Orell Füssli, 1907; 70 pp.). In this essay Professor Hitzig summarizes and discusses all the material furnished by writers and by inscriptions touching the interstate administration of justice among the ancient Greeks, in so far as this was provided for or regulated by treaties. The author includes treaty provisions governing the administration of criminal as well as of civil justice, and treaties of arbitration as far as these provided for the termination of controversies between one of the contracting states and individual citizens of the other contracting state. To borrow a French phrase, for which neither the English nor the German law has an exact equivalent, Professor Hitzig's subject is the conventional *droit international particulier* of the ancient Greeks. A student of legal history will note with interest that this branch of inter-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

national law followed the same lines of evolution which we trace in early municipal law. The earliest treaties dealt only with torts and crimes; provision for the enforcement of contracts came later. The redress provided in the earliest treaties was reprisal by the injured party or by his friends — self-help legalized by the exclusion of counter-reprisal. Provision for suit in the ordinary domestic courts or in special arbitral courts came later. The material is fully up-to-date, including the most recent discoveries, and its treatment displays that competence which comes from a union of philological and juristic training.

At Aljustrel in Portugal was discovered, in 1876, a table of bronze commonly described as the *Lex metalli Vipascensis*. It constitutes part of a law or ordinance of the early Roman Empire for the government of the mining town of Vipasca. In the same locality was unearthed, in May, 1906, another table, containing rules regarding the exploitation of the state mines. This table also appears to contain a part only of a more extensive law. It has already elicited much learned discussion, to which Professor Zocco-Rosa makes a valuable contribution in a pamphlet entitled *La Nuova Tavola d'Aljustrel* (Catania, Istituto di Storia del Diritto Romano, 1907; 16 pp. and insertions). He rejects the theory that the newly discovered law is a "complement" to or modification of the *Lex metalli*. He thinks that it is either a general law governing the exploitation of silver and copper mines throughout the empire or a special law applying the general rules on this subject to the district of Vipasca. The former theory has been defended by Mispoulet, the latter by Cuq. According to Zocco-Rosa, the data at our command are inadequate to determine which of these two theories is correct. The chief interest of the newly discovered law lies in the fact that it sets forth rules under which pits may be sunk and veins followed up by any persons or associations on payment of royalties to the fiscus. Concessions not actively worked are open to "occupation" by others. When pits are being worked on shares, summary expropriation proceedings may be brought against shareholders who fail to pay promptly their proportion of the expenses. Stringent penalties are imposed upon "vein thieves" and upon persons damaging the timbering of the mines. Professor Zocco-Rosa inserts in his pamphlet the text of both tables, retaining the linear arrangement of the original inscriptions.

To collect in one series of volumes the more important contributions to the history of English and American law which are scattered through back numbers of periodicals or buried in the proceedings of learned

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

societies; to arrange these contributions in more or less systematic order and, by reprinting certain portions of standard books, "to give a certain symmetry to some topics and periods which would otherwise have been imperfectly represented," is the task undertaken by a committee of the Association of American Law Schools, consisting of Professors J. H. Wigmore, Ernst Freund and W. E. Mikell. Of the *Select Essays in Anglo-American Legal History* which they are thus bringing together, a first volume has appeared (Boston, Little, Brown and Company, 1907; x, 847 pp.). This volume is devoted to "General Surveys"; and as such matter is more often found in books than in single articles, it is not surprising that, of the twenty-one selections, eleven are extracted from more or less well-known books. Legal and historical journals, American university publications and transactions of societies furnish most of the other selections; but the long and very readable essay on "The Five Ages of the Bench and Bar of England," by Mr. J. M. Zane of the Chicago bar, is practically new matter, only a small part of it having previously appeared in print. The good judgment shown in the compilation and editing of this volume warrants the assumption that the following volumes will be of at least equal value; and as these are to deal with more special topics, it is probable that in them the element of fugitive literature will be more largely represented.

The international character of modern jurisprudence is illustrated by the fact that a young American scholar, trained in the Harvard Law School and in the University of Berlin, is now a reader in English law at the University of Cambridge, and by the further fact that most of his literary work has been published in German. Dr. H. D. Hazeltine is indeed known to American lawyers by his articles on "The Gage of Land in Mediæval England," which were published not long ago in the *Harvard Law Review;* but only those who follow the German legal literature have read his doctoral dissertation, published at Berlin in 1905, on *Englisches Mobiliarpfandrecht im Mittelalter.* This treatise he has now expanded into a book, entitled *Die Geschichte des englischen Pfandrechts*, which appears as number 92 in Gierke's "Untersuchungen zur deutschen Rechtsgeschichte" (Breslau, M. und H. Marcus, 1907; xxviii, 372 pp.). For the benefit of his German readers, Dr. Hazeltine devotes sixty introductory pages to a sketch of the general development of English law, particularly the law of property and of contracts. Book I of the body of the treatise deals with the law of pledge and mortgage in the Anglo-Saxon period; Book II, which fills half of the volume, carries the investigation from the Nor-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

man Conquest to the close of the middle ages. An appendix reproduces the principal texts, Latin, Saxon and Norman-French, which bear upon the development of the mortgage of real property; and the book closes with a useful list of the sources and literature and a careful index. The monograph is well worth publishing in English; and although it is to be hoped that the author will investigate some of the interesting questions which he leaves open (*cf.* page viii), it is also to be hoped that he will not hold back the English version until all obscure points are elucidated.

Every legal system recognizes standards of morals which it does not attempt to formulate. Even if the law goes no further in this direction, it at least refuses to enforce contractual or testamentary provisions which are *contra bonos mores*. The new German imperial code goes further, attaching more positive results to "the offence against morals." Such rules force upon the courts and upon legal writers two questions: (1) Where is the judge to find his standards of morals? (2) What acts, not in conformity with those standards, are to be regarded as offences against morals? To these two questions Professor Leonhard devotes an essay entitled *Der Verstoss gegen die guten Sitten* (Weimar, Hermann Bohlaus Nachfolger, 1907; 30 pp.), which is a reprint from the *Festschrift* in honor of E. J. Bekker. In answering the first question, Professor Leonhard upholds the theory now generally accepted not only in continental Europe but also in English-speaking countries. The standards of morals are, so far as the judge is concerned, objective. It is the opinion of the community, as evidenced in its conduct, and not the opinion of the court that should be decisive. In answering the second question, Professor Leonhard denies that all immoral acts are, in the legal sense, offences against morals. We are to consider, in each case, whether the immoral act is likely to set a bad example, and whether its recognition as legally permissible will establish a dangerous precedent. "The offence against morals lies in the menace to their maintenance" (page 20). The author endeavors to show that the decisions recorded in Justinian's Digest and those rendered by modern German courts are in accordance with this principle, and that its application solves certain current controversies.

In view of the pending revision of the American copyright laws and the numerous controversies which have arisen from the attempt to consolidate the law on this subject in a single act, the movement of judicial decisions in this field is of special interest. The collection of English and American *Copyright Cases, 1907* (London, The Publishers' Association, 1908; vii, 134 pp.), made by Mr. E. J. Macgillivray, the

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

author of well-known works upon the subject, and printed "for private circulation," shows, among other things, that the modern methods of reproducing pictures and musical compositions and the new commercial interests thereby created are raising many new legal problems; and the question arises whether the difficulties which our federal legislators are encountering are not due to the fact that the law of copyright is still in that stage of development in which the experimental lawfinding of the courts is distinctly more efficient and more satisfactory than legislation.

The flood of state legislation in this country invites comparative study of its tendencies and results; and in this field there is room for the coöperation of many public and private agencies without duplication of effort. The Legislative Reference Bureau of the Rhode Island State Library has undertaken to summarize, in a series of bulletins, the legislation upon special subjects now in force in sister states. Of the three bulletins thus far issued, the first deals with the veto power in the several states; the second, with the automobile laws of a group of eastern states; and the third, compiled by Grace Mabel Sherwood, is described as a *Summary of the General Banking Laws of the Commercial States* (Providence, E. L. Freeman Company, State Printers, 1908; 334 pp.). The "commercial states" of the Union are, it seems, only nineteen in number, and the list is somewhat arbitrary, including Kansas and Nebraska but excluding the Gulf states and California. Provisions of the banking laws in the nineteen selected states are reproduced under seventeen rather haphazard headings. Under each of these headings the legal provisions are grouped, not under topical sub-headings, but by states. For either practical or scientific purposes, the *Summary* would be more useful if the topical classification had been carried further; and the reduction of the whole mass of material to a series of rules, each followed by a list of the states in which it obtains, as in Stimson's *American Statute Law*, would save much repetition of identical or equivalent provisions.

Professor John A. Fairlie has collected in a volume of *Essays in Municipal Administration* (New York, The Macmillan Company, 1908; vii, 374 pp.) nineteen papers which have already appeared in various journals. In spite of their miscellaneous character, the essays can be readily divided into three main groups: the first relating to problems of legal organization, the second to municipal functions, and the third to city government in Europe. While all the papers are worth reprinting in their present form, those dealing with municipal corporations in the colonies, the municipal crisis in Ohio, revenue systems of

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

American and foreign cities and the street railway question in Chicago will perhaps prove to be of most permanent value. The essays on municipal activities in Great Britain and continental Europe will be of interest principally to those who do not read the more exhaustive works or are not versed in European languages. In the nineteenth chapter, directed especially to teachers of government, Dr. Fairlie outlines a scheme of civic instruction extending from the primary grade to the highest technical training afforded by the university. Altogether this volume will form a most useful supplement to the author's well-known *Municipal Administration*.

Professor Charles Zueblin's *Decade of Civic Development* (Chicago, The University of Chicago Press, 1905; vii, 188 pp.) is a reprint of several popular articles which appeared a few years ago in *The Chautauquan*. Among the topics considered are the recent growth of civic spirit in American cities, the elements in the education of a citizen, the principal features involved in the making of the city, the influence of expositions on municipal planning, civic improvements in Boston, Greater New York, Harrisburg and Washington. Professor Zueblin contends that a new civic spirit has appeared in our municipalities during the past ten years and supports his thesis by citing a large number of practical and beneficial measures which have been accomplished in various cities. One striking feature of the author's record of improvement is the effectiveness of combinations among a few determined citizens and the readiness with which wider coöperation is generally secured.

Mr. Robert H. Fuller's *Government by the People* (New York, The Macmillan Company, 1908; xiv, 261 pp.) is a political primer for voters, informing them concerning all the operations of government in which they may personally participate. It contains valuable chapters on election laws, ballot reform, party caucuses and conventions, party practices, primary legislation, qualifications for the exercise of the suffrage, and party platforms for 1904. While the book is limited in its references, which are principally to the state of New York, it has general value. It serves at the same time as an important indication of the need for a thorough treatment of the field which has thus been opened.

Professor Albert Bushnell Hart's *Manual of American History, Diplomacy and Government* (Published by Harvard University, 1908; xvi, 554 pp.) is the product of many years' teaching experience at Harvard, and on account of the large collection of topics offered and the extensive bibliographical apparatus it will be found useful by teachers

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

in other institutions. The volume contains a guide to the materials on American history, diplomacy and government; a syllabus of lectures with selected references; a long list of topics for class-room papers, each with appropriate bibliography; suggestive subjects for library reports; and specimen examination papers. The volume would doubtless be more serviceable and less formidable to the undergraduate if it were broken into three parts, dealing with history, diplomacy and government separately.

Mr. Frederick Scott Oliver's biographical study, *Alexander Hamilton: an Essay on American Union* (New York, G. P. Putnam's Sons, 1907; xiii, 502 pp.), is of that class of historical works which are intended not to reveal new facts but to envisage a man and his age from a new angle. Such enterprises are always of interest and often of practical bearing, especially when carried out with such discrimination and literary skill as Mr. Oliver has manifested. It would be clear, had our author not revealed it in his closing pages, that the great lesson of the book is the necessity of consolidating the British Empire; and Hamilton, the firm administrator and grand visionary, moved by a passion for an imperial American nation, is the figure that Mr. Oliver presents to his British compatriots. Almost every line vibrates with those emotions which are to-day driving England away from the age of John Bright. It is evident, therefore, that the volume is full of tendency; but let him who has not sinned cast the first stone. The author has shown a far clearer grasp of American conditions than most English writers; and, decided as are his sympathies for Hamilton, he has that quality of historical imagination and tolerance which enables him to understand Jefferson as well. Although in matters of fact there is little new for the American student, the volume will none the less be of service to him.

Dr. Elmer C. Griffith's *Rise and Development of the Gerrymander* (Chicago, Scott, Foresman and Company, 1907; 214 pp.) is a brief but useful study of an important and long neglected theme of American politics. The author reviews the gerrymander from its origin in colonial times to the year 1840, at which time it had become a generally recognized part of the political system. Those who fondly imagine that it is only we who have fallen on evil days will be surprised on discovering the antiquity of the institution so intimately associated with the name of Governor Gerry. It appears to have been a practice of colonial governors to fashion districts so as to secure supporters, and the sedate colony of Pennsylvania, within a quarter of a century of its first charter, had election districts cut out with partisan designs. In

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

the hot politics of the early days of the republic the same device was used to good effect, and the competition of later days for place and power gave the gerrymander a secure position in the art and practice of politics. Thus the doctrine of historical continuity has received at the hands of Dr. Griffith a new justification.

An interesting and valuable course of study is outlined by Professor George E. Howard in his *Comparative Federal Institutions: An Analytical Reference Syllabus* (University of Nebraska, 1907; 133 pp.). The course includes an examination of the characteristics and general principles of federal government; the history of the ancient Greek and Italian leagues and a study of the federal elements in the Roman commonwealth; the history of the Lombard League and of the United Netherlands; a description of the Holy Roman Empire, of the old Rhenish Confederation and of the Hansa; and a more detailed study of the origin and character of the existing constitutions of the United States, of Switzerland, of the Dominion of Canada and of the Australian Commonwealth. To other than Professor Howard's students the pamphlet will be of value by reason of the carefully selected references which he gives in each chapter and section. At the end are similar selected references for the study of the constitutions of the German Empire and of the Mexican and Argentine Republics. We note that no less than seventeen articles published in this QUARTERLY are deemed of sufficient permanent value to be included among Professor Howard's references.

A magnificent example of the work of the present school of French historians is to be found in the volume of studies on Breton history by Mr. Ferdinand Lot of the *École pratique des hautes études* in Paris. His *Mélanges d'histoire bretonne* (Paris, H. Champion, 1907; 478 pp.) is a fine specimen of scientific criticism of sources, with conclusions stated clearly and forcibly. The main interest of the book will probably lie in the lives of St. Malo, of which the texts are given as well; but other points of early Breton history are of growing interest at present. The somewhat shadowy figures of Nominoé and Erispoé are becoming tolerably familiar, and the study of Breton folk-lore is encouraging the historian to continue explorations in that isolated corner of France. Professor Lot's microscope has left nothing for others where he has been at work. The volume is indispensable for the early history of Brittany.

The eastern shore of the Adriatic is from every point of view one of the most interesting and important portions of the Balkan peninsula. Some conception of its archæological treasures may be had from Diehl's

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

En Mediterranée, and its architecture has been thoroughly studied by Jackson and by Neale. Maude M. Holbach's *Dalmatia: The Land where East meets West* (New York, John Lane Company, 1908; xiii, 234 pp.), is a modest, unpretentious account of all that will attract the tourist. The picturesque features of land and people are so described as admirably to color the black and white of the excellent photographic illustrations. Of all available sources the author has made conscientious use, so that the historic threads which run through the description are well spun. There is no discussion of administrative questions or of race conflicts, but they are indicated, and the reader will rise from a perusal of the book with some grasp on the vexing problems with which every Balkan power has to deal. Whatever may be thought of Austrian administration on its political side, the economic welfare of its peoples is safeguarded and promoted with intelligence. The building of highways and railways goes on apace. Mrs. Holbach's references to the minor industries introduced and fostered largely by paternalism are very interesting; and her account of excursions into the uplands shows Dalmatia as an important gateway into the great districts which have suffered so much from seclusion. Of course the Balkans, when approached from the West, seem very backward, and it is a pity that most travelers will be impressed, as is our author, by the retarded development of the people. But to one returning from the Orient the contrast of even the most backward districts in the borderland is marked and even startling. The reflux of occidental civilization into eastern Europe and western Asia is a phenomenon of the first importance, both socially and historically.

If it be true, as is claimed, that the anonymous author of *The Near East* (New York, Doubleday, Page and Company, 1907; 309 pp.) is an exalted personage who traveled as a bearer of British dispatches, and that he is especially qualified to reveal the "actual state of affairs" in the Balkan peninsula at the present moment, the work has great value. But the reader may be permitted to question some of these claims. It may be that the author was the first foreigner to visit Servian prisons and to study the penal system of that kingdom, and he may have been the first English guest among the wild tribes of northern Albania; but really important information on these, as on other topics of importance, has been withheld from the public, and it must be on what he does not write that he bases his conclusion that "to Germany, in great measure, is the present terrible state of Macedonia due." It is likewise difficult to find the basis for his confident prediction that Bulgaria would declare war on Turkey before April, 1908. The book in reality

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

is a sketchy account of a rambling tour through Montenegro, Albania, Bosnia, Herzegovina, Servia, Bulgaria, Roumania, Turkey and Macedonia. It would be more readable if it did not reek with offensive self-importance and oracular platitude. The photographic illustrations are very numerous and far more interesting than the text. Yet when all this is said the fact remains that the book is worth a perusal. The residuum of impression will fairly represent the present-day conditions. The preface is dated from Sofia, the author is Bulgarian in sympathy, has a profound contempt for Austria's work in Bosnia, praises Servia and execrates Greece as a tool of Germany. He writes primarily for an English public. This seems to account for his opinion that Bulgaria is to win England's battles in Turkey, if war must come, and if this be within the scope of the *entente* between Russia and Great Britain.

It is well for Americans to realize that the great migration of Europeans to this country is but a part, although the larger part, of the overflow of Europe. With most of the facts brought out in R. Gonnard's *L'Émigration européenne au xix^e^ siècle* (Paris, Armand Colin, 1906; 297 pp.) we are already acquainted, through many publications issued in this country; but the peculiar point of view from which the author approaches the subject and the convenient and critical assemblage of statistics from all countries which he offers give the book value to American readers. The French point of view is interesting on account of its plaintive contentment with its own stationary population. The millions of emigrants sent out by its overpeopled neighbors to occupy new worlds afford no satisfaction to the countries which they abandon. The German, the Slav, the Italian, go to swell the numbers that yield obedience to the sovereignty of Anglo-Saxon nations. Yet the Anglo-Saxons get no advantage, because their own race is becoming stationary, like the French, under the doctrines of Neo-Malthusianism. We may doubt the author's prediction (page 61) of the Latinizing of the United States through *la prolificité* of the Latin races and the sterility of the *type britannique*, and we might suggest that the prompt Americanization of the Germans (page 149), which he mentions with satisfaction, is paralleled by that of the Latins under similar surroundings. The author's general conclusion is perhaps sound, that the new worlds will not be exclusively Anglo-Saxon, German or Slav, but will be divided among all races of Europe. The one point where the yellow races have a chance of encroaching is Australasia (pages 70 *et seq.*); and this chance is afforded by the exclusiveness and the sterility of the Anglo-Saxon colonials.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED